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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BLACKWATER LODGE AND TRAINING CENTER, INC., a Delaware Corporation dba BLACKWATER WORLDWIDE, Plaintiff, v. KELLY BROUGHTON, in his capacity as Director the Development Services Department of the City of San Diego; THE DEVELOPMENT SERVICES DEPARTMENT OF THE CITY OF SAN DIEGO, an agency of the City of San Diego; AFSANEH AHMADI, in her capacity as the Chief Building Official for the City of San Diego; THE CITY OF SAN DIEGO, a municipal entity; and DOES 1-20, inclusive, Defendants.	Case No. 08 CV 0926 H (WMC) **DEFENDANTS' NOTICE OF LODGMENT OF CALIFORNIA CASES IN SUPPORT OF DEFENDANTS' RESPONSE TO COURT'S ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION** **EXHIBITS 7 THROUGH 14** Date: June 17, 2008 Time: 10:30 a.m. Courtroom: 13 Judge: Hon. Marilyn L. Huff

On behalf of the Defendants in this case, the City of San Diego hereby lodges the following documents in support of their Response to the Court's Order to Show Cause re Preliminary Injunction:

EXHIBIT 7

Westlaw.

62 Cal.App.4th 1332
62 Cal.App.4th 1332, 74 Cal.Rptr.2d 1, 98 Cal. Daily Op. Serv. 2626, 98 Daily Journal D.A.R. 3588
(Cite as: 62 Cal.App.4th 1332)

FAMILIES UNAFRAID TO UPHOLD RURAL EL DORADO COUNTY et al., Plaintiffs and Appellants, v. BOARD OF SUPERVISORS OF EL DORADO COUNTY et al., Defendants and Respondents; COOK RANCH PARTNERS, Real Party in Interest and Respondent.
Cal.App.3.Dist.

FAMILIES UNAFRAID TO UPHOLD RURAL EL DORADO COUNTY et al., Plaintiffs and Appellants,
v.
BOARD OF SUPERVISORS OF EL DORADO COUNTY et al., Defendants and Respondents;
COOK RANCH PARTNERS, Real Party in Interest and Respondent.

Nos. C025674, C026477.

Court of Appeal, Third District, California.
Mar. 9, 1998.

[Opinion certified for partial publication. FN1 **]**

FN1 Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication except for parts 1c, 1d, 1e, 1f, 2, 3, and 4.

SUMMARY

A city and other interested parties filed a petition for a writ of mandate and a complaint for declaratory and injunctive relief against a county and its board of supervisors, challenging defendants' approval of a residential subdivision project on the ground that the project was inconsistent with the land use element of the county's draft general plan. The trial court entered a judgment dismissing the petition and the complaint, and an order awarding costs to defendants. (Superior Court of El Dorado County, No. PV001195, Winslow Christian, Judge. FN*)

FN* Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The Court of Appeal reversed the judgment and the order awarding costs and remanded for further proceedings. The court held that the project was inconsistent with the land use element of the draft general plan, and thus the board's implied finding of consistency was not supported by substantial evidence. The general plan stated the policy of providing for an appropriate range of land uses, and it required that areas designated low-density residential (LDR) be "contiguous to community regions and rural centers to provide for a transition of density into the rural regions." The evidence was undisputed that no part of the project site was contiguous to a community region or a rural center and that the site was separated from community regions or rural centers by the rural residential land use designation, except for some low-density and medium-density residential platted lands to the northeast. Thus, the LDR designation for the project was inconsistent with the draft general plan policies and could not be saved by the platted lands to the northeast. On the evidence before the board, no reasonable person could have concluded otherwise. (Opinion by Davis, J., with Sims, Acting P. J., and Raye, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Zoning and Planning § 17--Zoning Ordinances and Planning Enactments-- Comprehensive Long-term General Plan--Consistency of Project With Plan.
Under Gov. Code, § 65300, every county and city must adopt a " comprehensive, long-term general plan for the physical development of the county or city." The general plan is the constitution for all future developments within the city or county. The propriety of virtually any local decision affecting land use and development depends upon consist-

ency with the applicable general plan and its elements. Statutorily required elements include land use, circulation, housing, conservation, open space, and noise. The consistency doctrine is the linchpin of California's land use and development laws; it is the principle that infuses the concept of planned growth with the force of law. A project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. A given project need not be in perfect conformity with each and every general plan policy. To be consistent, a subdivision development must be compatible with the objectives, policies, general land uses, and programs specified in the general plan.

(2a, 2b) Zoning and Planning § 17--Zoning Ordinances and Planning Enactments--Comprehensive Long-term General Plan--Consistency of Project With Plan--Residential Subdivision Project.

A county and its board of supervisors erred in approving a residential subdivision project under the county's draft general plan. The project was inconsistent with the land use element of the draft general plan, and thus the board's implied finding of consistency was not supported by substantial evidence. The general plan stated the policy of providing for an appropriate range of land uses, and it required that areas designated low-density residential (LDR) be "contiguous to community regions and rural centers to provide for a transition of density into the rural regions." The evidence was undisputed that no part of the project site was contiguous to a community region or a rural center, and that the site was separated from community regions or rural centers by the rural residential land use designation, except for some low-density and medium-density residential platted lands to the northeast. Thus, the LDR designation for the project was inconsistent with the draft general plan policies and could not be saved by the platted lands to the northeast. On the evidence before the board, no reasonable person could have concluded otherwise. Further, even though the project was consistent with other policies in the general plan, the nature of a policy and the nature of an inconsistency are critical factors to consider, and the land use policy in this case was fundamental and mandatory.

[See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 53; 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 829 et seq.; 7 Miller & Starr, Cal. Real Estate (2d ed. 1990) § 20:94.]

(3) Zoning and Planning § 17--Zoning Ordinances and Planning Enactments-- Comprehensive Long-term General Plan--Consistency of Project With Plan-- Judicial Review.

A local governing body's determination that a development project is consistent with the local general plan carries a strong presumption of regularity. This determination can be overturned only if the body abused its discretion, that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. As for the substantial evidence prong, a determination of general plan consistency will be reversed only if, based on the evidence before the local governing body, a reasonable person could not have reached the same conclusion.

COUNSEL

Randy L. Barrow and Thomas P. Infusino for Plaintiffs and Appellants.

Louis B. Green, County Counsel, Edward L. Knapp, Chief Assistant County Counsel, Ellman, Burke, Hoffman & Johnson, Howard N. Ellman, John D. Hoffman and Paul J. Neibergs for Defendants and Respondents and for Real Party in Interest and Respondent.

DAVIS, J.

In this action, the City of Plymouth, the Foothill Conservancy, and an unincorporated association, Families Unafraid to Uphold Rural El ***1335** Dorado County (also known as FUTURE) (collectively, the plaintiffs), have filed a petition for writ of mandate and a complaint for declaratory and injunctive relief against El Dorado County and its board of supervisors (collectively, County, or individually County and Board, as indicated). Plaintiffs allege the Board failed to comply with the County's draft general plan and with the California Environmental Quality Act (CEQA) in approving the "Cinnabar" residential subdivision project. Cook Ranch Partners (Cook), the real party in interest, is Cinnabar's developer.

Cinnabar is a planned development residential subdivision encompassing 566 lots on 7,868 acres of land (about 12 square miles), with an equestrian theme and nearly 2,900 acres of open space. The project site is in the southwestern portion of County and is currently used for grazing. The site is roughly six miles in length (north to south) and two miles in width. The northern boundary of the project site is about four miles south of the town of El Dorado. The southern boundary is about six miles north of the City of Plymouth (which is in Amador County).

The trial court ruled in County's favor, and awarded County judgment and costs. In two consolidated appeals (one of which deals only with the issue of costs), plaintiffs raise a plethora of issues. We conclude, in the published portion of this opinion, that Cinnabar is inconsistent with the land use element of County's draft general plan. In the unpublished portion, we conclude: One of the Board's findings regarding consistency with the agriculture and forestry element (i.e., the Nielsen Ranch) is not supported by substantial evidence; Cinnabar is inconsistent with the noise element of the draft general plan; the Board's findings rejecting project alternatives "C, " "D," and "E" as economically infeasible are not supported by substantial evidence; the deferred impact analysis/mitigation measure for past mining contamination does not meet CEQA standards; the cumulative wildlife habitat analysis in the environmental impact report (EIR) is adequate if certain assumptions are true; the EIR must respond to the public inquiries about the effectiveness of County's erosion plan and about Cook's compliance history with mitigation measures; and the Board's findings regarding Cinnabar's rezoning, planned development, and tentative subdivision map are inadequate to the extent they are based on these deficiencies. In light of these conclusions, we reverse the judgment and the award of costs to County. We also remand on the question of administrative record copying costs requested by plaintiffs. For guidance of the parties, we address and reject plaintiffs' other contentions. ***1336**

Discussion

1. *Consistency With the Draft General Plan*

a. *Background and Standard of Review*

(1) Every county and city must adopt a "comprehensive, long-term general plan for the physical development of the county or city ...." (Gov. Code, § 65300.) "The general plan has been aptly described as the 'constitution for all future developments' within the city or county.... '[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements' [statutorily required elements include land use, circulation, housing, conservation, open space and noise]." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570 [276 Cal.Rptr. 410, 801 P.2d 1161], citations omitted (*Citizens*);Gov. Code, § 65302.) "The consistency doctrine has been described as 'the linchpin of California's land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law.' ..." (*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994 [21 Cal.Rptr.2d 803], citation omitted (*Corona*).)

A project is consistent with the general plan " 'if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.' " (*Corona*, *supra*,17 Cal.App.4th at p. 994, quoting an advisory general plan guideline from the state Office of Planning and Research.) A given project need not be in perfect conformity with each and every general plan policy. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719 [29 Cal.Rptr.2d 182] (*Sequoyah*).) To be consistent, a subdivision development must be "compatible with" the objectives, policies, general land uses and programs specified in the general plan. (*Id.* at pp. 717-718.)

County was updating its general plan when Cook submitted the Cinnabar project for approval. As it was authorized to do, the state Office of Planning and Research (OPR) required County to make findings, reasonably supported by evidence in the record, (1) that any development County approved be consistent with County's public review draft general plan (Draft General Plan), and (2) that there be little or no probability that the development would be detrimental to or interfere with the future adopted general plan. (Gov. Code, § 65361, subds. (c)(3), (d), (e); *Harroman Co. v. Town of Tiburon* (1991) 235 Cal.App.3d 388, 394-396 [1 Cal.Rptr.2d 72]; see also ***1337***Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511-518 [113 Cal.Rptr. 836, 522 P.2d 12] [an agency's administrative findings must disclose evidence-based reasoning].)

The Board did make such findings, stating:

"1. The proposed project, including design and improvements, is consistent with the public review Draft General Plan Policies and Land Use Map because it carries out and implements the important policies of integrating low density residential development with preservation and enhancement of large-scale open space resources, improving public access to open space, locating and preserving cultural resources and providing a type of residential development that is not otherwise available in the County, all as part of the project features under the approval conditions.

"2. There is little or no probability that the project will be detrimental to or interfere with the future adopted General Plan because:

"i) It provides for a low density rural residential use, employing cluster development concepts to enhance environmental sensitivity, over that of a more typical large lot subdivision, with a sensitive relationship between the residential areas and the open space to be preserved in a manner that exemplifies the type of sound planning that should be encouraged within the County;

"ii) The project calls for set-aside management and preservation of approximately 3,000 acres of open space in scenic, attractive country very desirable for regional open space use with hiking trails and other provision for limited public access;

"iii) The project approval conditions will implement an unprecedented and detailed arrangement for location and protection of archeological resources, artifacts and sacred sites associated with former use of the project area by Native Americans;

"iv) The project approvals require that the project applicant implement a detailed wildland fire management plan to provide sanctuary areas available for project residents and others in the vicinity;

"v) Development of the project will create a demand for approximately 2,000 construction related jobs and 500 permanent jobs at full buildout; and

"vi) [T]he project will meet a demand for a type of housing that is in short supply within the County." ***1338**

(2a) Plaintiffs claim that Cinnabar is inconsistent with the Draft General Plan. They also claim that the Board's findings of consistency with the Draft General Plan and compatibility with its future general plan are not supported by substantial evidence. As we explain in the published portion of this opinion, we agree that Cinnabar is inconsistent with the Draft General Plan's land use element. In the unpublished portion, we conclude that Cinnabar is inconsistent with the noise element and that a finding regarding the agriculture and forestry element is not supported by substantial evidence.

(3) The Board's determination that Cinnabar is consistent with the Draft General Plan carries a strong presumption of regularity. (*Sequoyah, supra,*23 Cal.App.4th at p. 717.)This determination can be overturned only if the Board abused its discretion-that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. (*Ibid.*) As for this substantial evidence prong, it has been said that a determination of general plan consistency will be reversed only if, based on the evidence before the local governing body, "... a reasonable person could not have reached the same conclusion." (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 243 [242 Cal.Rptr. 37].)

b. *Land Use Element*

(2b) In June 1992, Cook asked County to rezone the Cinnabar property from RA-40 and RA-80 (residential agriculture, 40and 80-acre parcels) to RE-10/PD (residential estate, 10-acre/planned development). Shortly thereafter, Cook sought planned development and tentative subdivision map approval for the proposed lots, ranging in size from five to eighty acres. As noted, County was updating its general plan at this time.

On January 11, 1994, the Board approved a Draft General Plan, consisting of the goals, objectives and policies specified in a third draft and the land use maps set forth in a second draft. The land use map of the second draft specified a "RRL" land use designation (rural residential low density, 1 dwelling unit per 40-160 acres) for almost all the Cinnabar site (with a "NR" [natural resources] designation comprising the remainder).

At the January 11 proceeding, a Cinnabar representative referred to this land use map and said: "[T]he problem is we're stuck now in the way the map process came down ... and we're here to ask to get unstuck so we can keep going.... [T]he RRL ... virtually kills the project ...." County counsel later cautioned the Board that "if you're going to be amending the [Draft General Plan], that you're going to need ... a due process type ***1339** procedure to amend [it]." The Board then decided to reserve a decision on the general plan land use designation for Cinnabar.

On February 15, 1994, County's planning director proposed a Draft General Plan land use designation for Cinnabar that combined the RR (rural residential, 1 dwelling unit per 20-160 acres) and the LDR (low-density residential, 1 dwelling unit per 5 acres) land use designations. Under this proposal, the RR category would apply to 5,654 acres of the Cinnabar property and the LDR category to 1,400 acres (about 18 percent of the site), in a "floating" manner without specifically mapped boundaries; this would permit a planned development of up to 579 residential units. [FN2] According to the planning director, this proposal could allow the project to go forward and be reviewed under the current EIR and the Draft General Plan. But the planning director had also cautioned that designating LDR on the Cinnabar site ran counter to Draft General Plan policies that required LDR to be contiguous to community regions or rural centers, that required LDR not to be separated from these areas by the rural residential land-use designation, and that precluded previously "platted" (subdivided) lands from being used to justify new incompatible land uses.

FN2 The balance of the acreage in the Cinnabar site would be designated NR (natural resource), covering natural resource areas that are not amenable to development.

At the February 15 Board proceeding, Cook's counsel responded to the planning director's proposal and comments as follows: "[I]t should be clear that the [proposal] that you have before you will not commit you to anything. It doesn't approve a project. It doesn't approve an inclusion in a final general plan. It simply defines the scope of a study that will be ongoing. You reserve the right ... to suspend all or portions of general plans after they are adopted."

On March 1, 1994, the Board considered the planning director's proposal. The planning director reiterated: "There is one area of concern and I believe I discussed [it] last time with the Board .... In its purer sense, low density residential [LDR] does not work on [the Cinnabar] property based on the framework of the rest of the land use designations and the land use pattern in the area. And that's why I'm recommending ..., if [the Board] desire[s] to go forward, that you create a ... maximum density using the rural residential category [RR] and the LDR category but ... doing it as a floater and not being specific in terms of where those particular land use designations would apply." ***1340**

The Board then adopted, on a three-to-two vote, the proposal of the planning director, who had noted "that the density can be shifted throughout the property ... depending on land use constraints." FN3

> FN3 Plaintiffs argue that Cinnabar is not consistent with the "legitimate" map of the Draft General Plan-that is, the second draft map. As we have seen, however, the Board did not apply the second draft map to Cinnabar. Instead, the Board gave Cinnabar a "floating" land use designation for general plan purposes as described above.

Policy 2.2.1.2 of the Draft General Plan's land use element governs land use designations and specifies in pertinent part:

"To provide for an appropriate range of land use types and densities within the County, the following General Plan land use designations are established and defined ....

"Low Density Residential (LDR) ... The application of the LDR land use designation shall be further restricted to those lands contiguous to Community Regions and Rural Centers to provide for a transition of density into the Rural Regions. This designation shall not be assigned to lands which are separated from Community Regions or Rural Centers by the Rural Residential land use designation, nor to any areas contiguous to Natural Resources unless it is for the purpose of recognizing existing platted lands (lands which have previously been subdivided.[).]"

The evidence is undisputed that no part of the Cinnabar project site is contiguous to a community region (basically, a general plan-identified larger town or area of development) or a rural center (basically, a general plan-identified smaller town or area of development). The evidence is also undisputed that the Cinnabar site is separated from community regions or rural centers in the Draft General Plan by the rural residential (RR, RRL) land use designation, except for some LDR-PL and MDR-PL (low-density and medium-density residential platted lands) to the northeast. Policy 2.2.2.3 of the Draft General Plan governs the PL (platted lands) land use designation and specifies: "The purpose of the *Platted Lands (PL)* overlay designation is to identify isolated areas consisting of contiguous existing smaller parcels in the Rural Regions where the existing density level of the parcels would be an inappropriate land use designation for the area based on capability constraints and/or based on the existence of important natural resources. The PL designation shall be combined with a land use designation which is indicative of the typical parcel size located within the Platted Lands boundaries. *The existence of the PL overlay cannot be used as a criteri[on] or precedent to expand or establish new incompatible land uses.*" (First italics in original, second added.) ***1341**

It is readily apparent that the LDR designation for Cinnabar is inconsistent with the Draft General Plan policies set forth above governing contiguous development and rural separation, and cannot be "saved" by the platted lands to the northeast. No reasonable person, on the evidence before the Board, could conclude otherwise. County recognizes this state of affairs. As a direct response to it, County in its brief can muster only the following: "The Board was fully aware of those provisions [i.e., the provisions on contiguous development and rural separation], however, when it approved a hybrid land use designation for the 7868-acre Cinnabar property and made that designation part of the land use map for the Draft General Plan."

In indirect ways, County attempts to show Cinnabar's compatibility with the Draft General Plan. County argues that inconsistency with simply one general plan policy should not be enough to scuttle a project. The court in *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738 [202 Cal.Rptr. 423] concluded otherwise. There, a project was deemed inconsistent with a general plan because it conflicted with one policy in the conservation element. (*Id.* at p. 753.)

County looks to language in *Sequoyah, supra,*23 Cal.App.4th at page 719 that "... a given project need not be in perfect conformity with each and every [general plan] policy," and that "no project could completely satisfy every policy stated in [a general plan]." That may be true. But the nature of the policy and the nature of the inconsistency are critical factors to consider.

In *Sequoyah*, there was substantial evidence that a subdivision project was consistent with 14 of 17 pertinent policies. The three remaining policies were amorphous in nature-they "encouraged" development "sensitive to natural land forms, and the natural and built environment." (23 Cal.App.4th at p. 719.)As to these three policies, there was conflicting evidence of consistency.(*Id.* at p. 720.)

There was also a question of density consistency in *Sequoyah*. (23 Cal.App.4th at p. 718.)But the general plan in *Sequoyah* afforded officials "some discretion" in this area, and their density allowances aligned with this discretionary standard. (*Ibid.*)

By contrast, the land use policy at issue here is fundamental (a policy of contiguous development, and the Draft General Plan states that the "Land Use Element is directly related to all other elements contained within the General Plan"); the policy is also mandatory and anything but amorphous (LDR "shall be further restricted to those lands contiguous to Community Regions and Rural Centers" [both of which are specified 'town-by-town' in ***1342** the Draft General Plan], and "shall not be assigned to lands which are separated from Community Regions or Rural Centers by the Rural Residential land use designation").

Moreover, Cinnabar's inconsistency with this fundamental, mandatory and specific land use policy is clear-this is not an issue of conflicting evidence. (Cf. *Corona, supra,*17 Cal.App.4th at p. 996 [in rejecting a challenge of general plan inconsistency, the court there stated: "In summary, the General Plan is not as specific as those in the cases on which the [challenger] relies and does not contain mandatory provisions similar to the ones in those cases."].)

County notes the Board made Cinnabar consistent with the land use map of the Draft General Plan. As part of its general plan guidelines, the OPR publishes a checklist to determine whether a subdivision is consistent with a general plan. That checklist notes that a subdivision must not only be consistent with the general plan map, but also consistent "with the plan's written policies and standards regarding uses, density, and intensity."

Continuing in a related vein, County points to the section of the Draft General Plan entitled "Using The Plan." That section states in part: "In implementing the General Plan, it must be applied comprehensively. No single component (map, goal, objective, policy or map [*sic*]) can stand alone in the review and evaluation of a development project. Conversely, the absence of a specific policy enabling a particular aspect of a project (*exclusive ofbasic density consistency*) is not to be grounds for a finding of general plan inconsistency." (Italics added.)

The language highlighted above, however, sows the seeds which destroy this argument.

Finally, County looks to the policies in the Draft General Plan with which Cinnabar is consistent; these are expressed in the Board's finding of consistency with that plan (quoted at the outset of this discussion) and are confirmed by the principle that the LDR land use designation is generally appropriate in rural regions. The general consistencies expressed in this finding and principle, however, cannot overcome the specific, mandatory and fundamental inconsistencies with the LDR land use policies noted above.

We conclude that Cinnabar is inconsistent with the land-use element of the Draft General Plan and that the Board's implied finding of such consistency is not supported by substantial evidence. ***1343**

c.-f. FN*

FN* See footnote, *ante*, page 1332.

. . . .

2. -4. FN*

FN* See footnote, *ante*, page 1332.

. . . .

Disposition

The judgment dismissing the petition for writ of mandate and the complaint for declaratory and injunctive relief is reversed. We have concluded that: Cinnabar is inconsistent with the land-use element of County's Draft General Plan; the Board's implied finding that Cinnabar is consistent with the agriculture and forestry element regarding the Nielsen Ranch is not supported by substantial evidence; Cinnabar is inconsistent with the noise element of the Draft General Plan; the Board's findings rejecting project alternatives “C”, “D” and “E” as economically infeasible are not supported by substantial evidence; the deferred impact analysis/mitigation measure for past mining contamination does not meet CEQA standards; the cumulative wildlife habitat analysis in the EIR is adequate if certain assumptions are true; the EIR must respond to the public inquiries about the effectiveness of County's erosion program and about the developer's compliance history with mitigation measures; and the Board's findings regarding Cinnabar's rezoning, planned development, and tentative subdivision map are inadequate to the extent they are based on these deficiencies.

The order awarding costs to County is reversed. The request by plaintiffs that County and Cook pay plaintiffs the respective amounts of $753.90 and $704.78, plus interest, for their copies of the administrative record provided by plaintiffs, is remanded to the trial court for further consideration in light of our reversal.

Plaintiffs are awarded their costs on appeal.

Sims, Acting P. J., and Raye, J., concurred. ***1344**
Cal.App.3.Dist.
Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs
62 Cal.App.4th 1332, 74 Cal.Rptr.2d 1, 98 Cal. Daily Op. Serv. 2626, 98 Daily Journal D.A.R. 3588

END OF DOCUMENT

EXHIBIT 8

C

Greenebaum v. City of Los Angeles
Cal.App.2.Dist.
KATHARINE EILEEN GREENEBAUM et al., Plaintiffs and Appellants,
v.
CITY OF LOS ANGELES et al., Defendants and Respondents; PAUL CHEN et al., Real Parties in Interest and Respondents.
Civ. No. 68931.

Court of Appeal, Second District, Division 1, California.
Mar 21, 1984.

SUMMARY

The trial court denied a petition by the tenants of an apartment building who were seeking to set aside a city council's approval of a tentative tract map for the construction of new condominium units on the site of the apartment building. The environmental review committee had determined that the proposed development would not have a significant effect on the environment, and had issued a conditional negative declaration for the proposed tract map. Thereafter, the city council considered and reviewed the draft, proposed, and final environmental impact reports, and conducted extensive public hearings on the project at which the tenants were permitted to testify. The city council considered the comments along with their planning and environmental committee's responses to those comments, and finally the city council made a decision based upon all of the evidence as well as expert opinions on the subject. Such decision certified the final environmental impact report, adopted a statement of overriding considerations, denied the appeal and adopted the findings and modified conditions to the tenative tract map approval which were recommended by the committee. The trial court determined that the standard to be used to review the city council's approval of the tentative tract map was to determine if there was substantial evidence to support the findings of the city council, and if those findings supported such decision. (Superior Court of Los Angeles County, No. C 407772, Leon Savitch, Judge.)

The Court of Appeal affirmed, and vacated a temporary stay order. The court held that the trial court was correct in utilizing the substantial evidence test to review the city council's approval of the tentative tract map. Thus, the court held that it was limited to determining whether the city council's findings were supported by substantial evidence. Ruling on the merits, the court held that the trial court had substantial evidence to support its finding that the city council properly reviewed and considered the environmental impact report as required by the California Environmental Quality Act of the Public Resources Code. The court also held that the city council's decision was neither arbitrary nor capricious in granting approval of the project, and that the tenants received a fair hearing, even though the city council arrived at two different decisions concerning two tracts in the same geographical area, both of which were based upon the same environmental impact report. The court further held that the tract map was in compliance with the general plan and thus complied with the Subdivision Map Act, considering that an exact match between the Subdivision Map Act and the tentative tract map was not intended by the Legislature, and that the requirement was only that the tentative map be in agreement or in harmony with the general or specific plan. Finally, the court held that the environmental impact report was adequate, despite the tenants' disapproval of the method of calculating the figures used in the report, since it was not an abuse of discretion for the city council to give more weight to one set of experts than to another. (Opinion by Gutierrez, J., [FN*] with Spencer, P. J., and Dalsimer, J., concurring.)

FN* Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Administrative Law § 131--Judicial Review and Relief--Scope and Extent--Evidence--Substantial Evidence Rule.
The provisions of Code Civ. Proc., § 1094.5, governing administrative mandamus, structure the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. A reviewing court must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision. In making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision. When applying the substantial evidence test, courts may reverse an agency's decision only if, based upon the evidence before the agency, a reasonable person could not have reached the conclusion reached by the agency.

(2) Administrative Law § 131--Judicial Review--Scope and Extent--Evidence-- Substantial Evidence Rule--City Council's Approval of Tentative Tract Map.
In a proceeding by the tenants of an apartment building to set aside a city council's approval of a tentative tract map for the construction of a condominium on the site of the apartment building, the trial court correctly found that the standard to be used in reviewing the city council's approval of the tentative tract map was to determine if there was substantial evidence to support the findings of the city council and if those findings supported the decision. The independent judgment test was not the requisite standard of review, considering that the right claimed by the tenants, that of having the security of knowing that one has a roof over one's head, was not constitutional in nature, and was not a fundamental right.

(3) Administrative Law § 124--Judicial Review--Scope and Extent--Evidence-- Standard of Review.
When the independent judgment rule applies, the trial court makes its own independent findings, and review on appeal is directed to whether there is substantial evidence to support the court's findings. On the other hand, if the substantial evidence test applies, both the trial and appellate courts limit their review to the question of whether the agency's findings were supported by substantial evidence.

(4) Zoning and Planning § 9--Content and Validity of Zoning Ordinances and Planning Enactments and Orders--Construction of Condominium on Site of Apartment Building--City Council's Review of Environmental Impact Report.
In a proceeding by the tenants of an apartment building to set aside a city council's approval of a tentative tract map for the construction of a condominium on the site of the apartment building, the trial court had substantial evidence to support its finding that the city council properly reviewed and considered the environmental impact report as required by the California Environmental Quality Act of the Public Resources Code. The city council did not improperly delegate its responsibility to the planning department's deputy advisory agency. Also, not only did the members of the city council each receive copies of the draft, the proposed, and the final environmental impact reports, but there were numerous hearings before both the full city council and the planning and environment committee, which was composed of city council members. Furthermore, the city council members voted to certify the finding that they had reviewed and considered the information in the final report, and that the report had been completed in compliance with the California Environmental Quality Act and the state's and city's guidelines.

(5) Zoning and Planning § 9--Content and Validity of Zoning Ordinances and Planning Enactments and Orders--Construction of Condominium on Site of Apartment Building--City Council's Approval of Project--Right to Fair Hearing.
The decision of a city council to grant approval of a condominium construction project on the site of an

existing apartment building was neither arbitrary nor capricious, and the existing tenants of the apartment building received a fair hearing before the city council. Thus, the agency did not commit an abuse of discretion, even though another project in the same part of the city was disapproved on the day that the subject project was approved, and even though both projects were based upon the same environmental impact report. The city council had information before it which illuminated the differences between the two properties. Moreover, the tracts were not identical. Thus, the fact that the city council arrived at different decisions concerning the two tracts could not be characterized as arbitrary and capricious.

(6) Zoning and Planning § 5--Constitutional and Statutory Provisions-- Conformity of Tract Map With General Land Use Plan--Compliance With Subdivision Map Act.
Although Gov. Code, § 66473.5, as part of the Subdivision Map Act, requires a finding by a local agency of consistency with a general or specific plan, the general land use plan which a city or county is required to adopt is simply a statement of policy. A general plan or policy, whether it be adopted by governmental entity or private organization, serves to provide a standing consistent answer to recurring questions and to act as a guide for specific plans or programs. An exact match between the Subdivision Map Act and the tentative tract map is thus not intended, and the requirement is only that the tentative map be in agreement or harmony with the general or specific plan. Thus, the decisionmaking power in the area of land use and planning rests with the local governmental agencies, to be exercised within the constraints prescribed by enactments of the state Legislature. When any attack is made upon the exercise of that decisionmaking power and the adequacy of the general plan within which it is to be exercised, a presumption of validity attaches to the actions of the local governmental agency.

(7a, 7b) Zoning and Planning § 9--Content and Validity of Zoning Ordinances and Planning Enactments and Orders--Construction of Condominium on Site of Apartment Building--Conformity of Tract Map With General Plan.
A city council properly found that a tentative tract map for the construction of a condominium on the site of an existing apartment building was in conformance with the Subdivision Map Act, which requires a finding by a local agency of consistency with a general or specific plan (Gov. Code, § 66473.5). There was conflicting evidence before the city council and, under such circumstances, it was for the agency to weigh the preponderance of the conflicting evidence. That decision was subject to reversal only if, based on the evidence before the agency, a reasonable person could not have reached the conclusion reached by the agency. Also, the city council issued an express finding that the proposed tract map was consistent with the district plan prior to its approval of the proposed tract. Such decision was reasonable and within its discretion, and was supported by its findings, which were based on substantial evidence.

(8) Administrative Law § 131--Judicial Review--Scope and Extent-- Substantial Evidence Rule.
The function of an appellate court is to determine whether the evidence, viewed in the light most favorable to the respondent, sustains the findings subject to review, resolving any reasonable doubts in favor of those findings. In making this determination the appellate court must resolve all conflicts in the evidence in favor of the judgment or decision of the tribunal below and indulge in all legitimate and reasonable inferences to support it. Insofar as the appellate court itself is concerned, the substantial evidence rule obtains whether it is reviewing the findings of the trial court or the trial court has exercised independent judgment, or whether the findings involve the decision of an agency or board where the trial court is not authorized by law to exercise its independent judgment. Where the trial court has properly exercised independent judgment, the appellate court is confined to the evidence received by the trial court; but where the trial court is

not authorized to exercise its independent judgment, the appellate court is limited to the evidence in the record before the agency or board.

(9a, 9b, 9c, 9d) Zoning and Planning § 9--Content and Validity of Zoning Ordinances and Planning Enactments and Orders--Construction of Condominium on Site of Apartment Building--Adequacy of Environmental Impact Report--Disagreement Among Experts.
In a proceeding by the tenants of an apartment building to set aside a city council's approval of a tentative tract map for the construction of a condominium on the site of the apartment building, the trial court had substantial evidence before it to find that the environmental impact report was accurate and adequate, and was properly the basis for approval of the tentative tract map. Moreover, even if the evidence provided in the report was judged on an independent basis, the report was nonetheless adequate. The tenants' complaint was essentially disapproval of the method of calculating the figures used in the report; however, since the Environmental Review Committee, which determined that the project would not have a significant effect on the environment, was apprised of the tenants' claims, it was not an abuse of discretion to give more weight to one set of experts than to another. The fact that there were different opinions arising from the same pool of information was not grounds for holding the environmental impact report to be inadequate. Also, the city had substantial evidence to support its findings when deciding on the project, and, given the conflict, the city council was permitted to give more weight to some of the evidence and to favor the opinions and estimates of some of the experts over the others.

(10) Zoning and Planning § 13--Content and Validity of Zoning Ordinances and Planning Enactments and Orders--Legislative Discretion and Judicial Review--Construction of Condominium on Site of Apartment Building--Adequacy of Environmental Impact Report--Substantial Evidence.
In a proceeding by the tenants of an apartment building to set aside a city council's approval of a tentative tract map for the construction of a condominium on the site of the apartment building, the trial court properly used the substantial evidence standard, pursuant to Pub. Resources Code, § 21168, to determine if there was support in the record for the city council's approval of the project, which trial court decision was required to be upheld if supported by substantial evidence. Even though the adequacy of the environmental impact report was being questioned, the trial court was not required to independently review the adequacy of the report.

(11a, 11b) Zoning and Planning § 9--Content and Validity of Zoning Ordinances and Planning Enactments and Orders--Adequacy of Environmental Impact Report--Effect of Disagreement Among Experts.
An environmental impact report should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation need not be exhaustive, and disagreement among experts does not make an environmental impact report inadequate. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure. Thus, it is not required that the body acting on an environmental impact report correctly solve a dispute among experts. All that is required is that in substance the material in the impact report be responsive to the opposition, particularly where opinion and not fact is in issue.
[See **Cal.Jur.3d,** Pollution and Conservation Laws, § 390; **Am.Jur.2d,** Pollution Control, § 31.]

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C. Richard Dodson for Real Parties in Interest and Respondents.
GUTIERREZ, J. FN*

FN* Assigned by the Chairperson of the Judicial Council.

A petition for a writ of mandate was filed by tenants of an apartment building located at 514-524 South Barrington Avenue in the City of Los Angeles. The City of Los Angeles had approved tentative tract No. 39860, proposed by the real party in interest, for the construction of 24 new condominium units on the Barrington property.

After appearing and being heard at various administrative hearings regarding the proposed development, the tenants brought the instant lawsuit to overturn the approval of the tentative tract map. This is an appeal from a judgment by the superior court in favor of respondents denying the petition of writ of mandate and upholding the action of the Los Angeles City Council.

Statement of Facts

On March 3, 1980, an application for a tentative tract map was filed with the Department of City Planning for the City of Los Angeles (Department), pursuant to Los Angeles Municipal Code section 17.00 et seq. The applicant proposed to build a 24-unit condominium development and demolish the existing 12-unit building on South Barrington Avenue in the City of Los Angeles.

The project site is located on the east side of Barrington Avenue, south of Sunset Boulevard in an area of multiple-family dwellings. The adopted Brentwood-Pacific Palisades District Plan designates the subject property for medium residential density (24 to 40 dwelling-units per gross acre) with a corresponding zone of R3. The subject property contains .60 gross acres and is presently zoned R3/1.

The environmental review committee determined that the proposed development would not have a significant effect on the environment and issued a conditional negative declaration for the proposed tract map. This committee ***398** concluded 'that no significant impacts are apparent which might result from this project's implementation.' Notice of the pending application and environmental clearance was mailed to the tenants and surrounding property owners on April 11, 1980, pursuant to Los Angeles Municipal Code section 17.06A6. A public hearing was held by the deputy advisory agency on April 30, 1980. The appellants were given an opportunity to present their opposition to the proposed development. On June 4, 1980, the deputy advisory agency approved tentative tract No. 39860 and certified the conditional negative declaration.

A timely appeal to the city planning commission (Commission) from the decision of the deputy advisory agency was filed by appellants. A hearing on the appeal was held on July 17, 1980. Appellants were present and gave testimony at the hearing. The commission continued the matter to its meeting of July 24, 1980, at which time they suspended the proceedings and remanded the matter to the environmental review committee to reconsider its previous action. A revised conditional negative declaration was issued on July 30, 1980. The appeal was again considered by the commission on September 18, 1980. At that time, appellants were again permitted to present their views. The commission failed to act by a two-to-two vote which left intact the action of the deputy advisory agency.

An appeal was then filed by appellants to the Los Angeles City Council (City Council) on October 3, 1980. The planning and environmental committee of the City Council (Committee) held public hearings on the appeal on October 21, and 28 of 1980. The appellants were present at the hearings and explained the basis of their appeal. After due consideration, the committee concurred in the decision of the deputy advisory agency and recommended denial of the appeal.

The appeal was heard by the entire City Council on October 30, 1980. After hearing testimony from appellants and a representative of the developer, the City Council determined that the project needed an environmental impact report (EIR) and continued the matter for the purpose of preparing an EIR to address the cumulative effect of the demolition of the existing apartments on the rental housing market.

On January 7, 1981, appellants submitted a series of comments to the Department detailing the areas that the EIR should address. In December of 1981, a draft EIR (DEIR) was circulated to appellants and other interested persons and agencies for their comments. Appellants submitted written comments regarding the DEIR on January 18, 1982. After reviewing and responding to these and other comments, a proposed final EIR was circulated in February of 1982. ***399**

On February 26, 1982, the appeal on tentative tract map No. 39860 and the proposed final EIR was before the City Council. After hearing testimony from the appellants and others, the City Council referred the matter back to the Committee for consideration of the proposed EIR.

The Committee held a public hearing on the proposed EIR on March 9, 1982. Appellants once again spoke at the hearing and presented their views on the sufficiency of the proposed final EIR. The Committee voted unanimously to certify the proposed final EIR, to uphold the decision of the deputy advisory agency to approve the tract map, to modify some of the conditions to the original approval, and to adopt the findings of June 4, 1980, as the City Council's findings.

The appeal then went back before the City Council on March 12, 1982. A public hearing was held and once again appellants were present and were given an opportunity to present their opposition to both the proposed final EIR and the tentative tract map. The City Council then certified the final EIR, adopted the statement of overriding considerations, denied the appeal, and adopted the findings and modified conditions to the tentative tract map approval which were recommended by the committee.

On April 19, 1982, appellant filed a petition for writ of mandate seeking to set aside the City Council's approval of tentative tract No. 39860. The superior court denied the petition. Plaintiffs appeal.

Contentions

Appellants contend that the City Council did not review and consider the EIR as mandated by the CEQA, but rather only adopted the recommendations of the deputy advisory agency.

They also argue that they did not receive a 'fair hearing' on the approval of the tract because they claim the City Council acted in an arbitrary and capricious manner.

Appellants further aver that the decision of the City Council is inconsistent with the city's housing element and the Brentwood Community Plan and that therefore the City Council abused its discretion in not denying the tentative map.

Finally, they claim that the EIR is inaccurate and inadequate and thus should not have been the basis for approval of the tentative tract map. ***400**

Discussion

I

Standard for the Trial Court's Review of the City Council's Decision

California Code of Civil Procedure section 1094.5 deals with the inquiry into the validity of an administrative order or decision. Section 1094.5 states in part: '(b) *The inquiry ... shall extend to the questions whether* the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether *there was any prejudicial abuse of discretion. Abuse of discretion is es-*

tablished if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. [¶] (c) *Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence; and in all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.*' (Italics added.)

Neither party disputes the applicability of Code of Civil Procedure section 1094.5 to this inquiry into the validity of the City Council's decision.

(1a)In the leading case on the issue, *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514 [113 Cal.Rptr. 836, 522 P.2d 12], Justice Tobriner, speaking for a unanimous court, noted that the 'Code of Civil Procedure section 1094.5 [is] the state's administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies.' Moreover, in this controlling opinion, he held that a reviewing court 'must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision. In making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.' (*Id.*, at p. 514.)

(2)Appellants assert that the independent judgment test is the proper test since, they argue, their rights are fundamental rights. These rights, they urge, are 'fundamental ones because it is a very basic right-that of having the security of knowing that you will have a roof over your head.' In support of their contention, appellants cite *Friends of Lake Arrowhead v. Board of Supervisors* (1974) 38 Cal.App.3d 497, 518, footnote 18 [***401**113 Cal.Rptr. 539], for the proposition that: 'in light of *Bixby* and *Strumsky*, the matter is open for question as to whether the legislature could 'validly prescribe the substantial evidence scope of review as it has done in Sections 21168 and 21168.5.'' Sections 21168 and 21168.5 are code sections under the California Environmental Quality Act (CEQA) of the Public Resources Code. These sections mandate the use of the substantial evidence test when dealing with a question of review of a public agency decision under CEQA and when inquiring, in a proceeding under CEQA, into a possible prejudicial abuse of discretion.

The passage quoted by appellants, although accurate, is misleading because the case did not find a fundamental right at issue under its facts nor did it imply that situations arising under sections 21168 and 21168.5 would be likely to involve fundamental rights. In fact, in context, the court was merely pointing out an 'intriguing question' which they mentioned as dicta in the footnote. (*Friends of Lake Arrowhead v. Board of Supervisors*, *supra.*, 38 Cal.App.3d 497, 818, fn. 18.)

Appellants have conceded in their opening brief that usually rights which are deemed 'fundamental' are either constitutional or statutory in nature. The right claimed by appellants 'that of having the security of knowing that you will have a roof over your head,' is certainly not of constitutional dimensions. Further, as noted above, the statutes do not elevate this 'right' to the level of a fundamental right. Therefore, the independent judgment test would *not* be applicable to this case.

In *McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175, 181-182 [131 Cal.Rptr. 462], as in this case, the appellant was requesting review of the city council's approval of a tentative tract map. The court followed the controlling *Topanga* decision when it held, '[t]he function of an appellate court in cases like this is to determine whether (1) the findings of the agency or local governmental body (hereafter 'agency') are legally sufficient, and (2) whether the findings are supported by substantial evidence and support the agency's decision.'

Thus, the trial court was correct in finding that the standard used in reviewing the City Council's approval of the respondent's tentative tract map was to determine if there was substantial evidence to support the findings of the City Council and if those findings support the decision.

(1b)Finally, when applying the substantial evidence test, 'Courts may reverse an agency's decision only if, *based on the evidence before the agency*, a reasonable person could not reach the conclusion reached by the agency.' ***402** (*McMillan v. American Gen. Fin. Corp., supra.*, 60 Cal.App.3d 175, 186.) (Italics in original.)

II

The Standard to Be Used by the Court of Appeal in Reviewing the Trial Court's Decision

(3) *McMillan v. American Gen. Fin. Cor., supra.*, 60 Cal.App.3d 175, 182 states, in regard to the Court of Appeal's standard of review, that, 'it is axiomatic that our inquiry (as was the trial court's) is limited by the substantial evidence rule to the record made before the city council. [Citations.]'

Additionally, the case of *Mountain Defense League v. Board of Supervisors* (1977) 65 Cal.App.3d 723, 728 [135 Cal.Rptr. 588], held: 'When the independent judgment rule applies, the trial court makes its own independent findings, and review on appeal is directed to whether there is substantial evidence to support the court's findings. [Citation.] On the other hand, *if the substantial evidence test applies, both the trial and appellate courts limit their review to the question of whether the agency's findings were supported by substantial evidence.* [Citation.]' (Italics added.)

Thus, since the substantial evidence rule applies to review of the City Council's decision by the trial court in this case, we are limited to determining whether the City Council's findings were supported by substantial evidence.

III

The City Council Reviewed and Considered the Environmental Impact Report as Required by the CEQA

Title 14, California Administrative Code, section 15090 states that the 'lead agency' (here the City Council), '[s]hall certify that: (a) The final [Environmental Impact Report (hereafter EIR)] has been completed in compliance with CEQA; and [¶] (b) The final EIR was presented to the decision-making body of the lead agency and that the decision-making body *reviewed and considered* the information contained in the final EIR prior to approving the project.' (Italics added.)

(4)The appellants assert that the City Council did not review and consider the EIR but instead improperly delegated the responsibility to the planning department's deputy advisory agency. The City Council, they claim, ***403** merely adopted the recommendations of the agency without first reviewing and considering the EIR independently. They assert that this can be inferred because the City Council did not comment upon appellants' objections to the EIR in its findings. This claim is not substantiated by the facts. On March 12, 1982, when the City Council took their final action in denying the appeal, they specifically adopted two reports. The first was the report of the planning and environmental committee which was a short summary of the appeal, the EIR, comments on the EIR and some responses to the comments. The second report adopted was the EIR which was also certified by the City Council as having been reviewed and considered. The EIR which was adopted was the final EIR and it included specific reference to each of appellants' major criticisms and detailed responses to those criticisms. The City Council is not required to repeat each comment on the EIR and their response to it in writing.

In addition, many of appellants' complaints and comments about the EIR were addressed in the public hearings which appellants invariably attended and at which the City Council heard and commented upon the criticisms raised.

Appellants' reliance on the case of *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770 [128 Cal.Rptr. 781] is misplaced. The *Kleist* case, decided by this court, involved a situation in which a city ordinance improperly allowed the city council to delegate its responsibility (to review and consider the EIR) to an administrative agency which dealt with environment and planning. Moreover, the actual minutes of the Glendale City Council meeting during which the action in question was taken, contained no discussion or debate on the EIR whatsoever. Even though all the council members had received copies of the EIR, only one councilman made even a general reference to environmental factors in relation to the ordinance. Under these circumstances, the *Kleist* court, held that it was not required to draw the inference that a city council reviewed and considered an EIR simply because it received copies of the EIR and then later acted on the ordinance.

This case can be distinguished from the *Kleist* case, in that here, the City Council itself was charged with the responsibility to review and consider the EIR. Not only did the members of the City Council each receive copies of the draft, the proposed and the final EIRs, but also there were numerous hearings before both the full City Council and the planning and environment committee (which is comprised of City Council members). Moreover, this City Council, in direct contrast to the Glendale City Council in *Kleist*, voted to certify the finding that they had, 'reviewed and considered the information in the final EIR' and also, that the EIR had been 'completed in compliance with the CEQA of 1970 and the State's and City's Guidelines.' ***404**

The trial court found that there was sufficient evidence to conclude that the City Council had not abused its discretion and that it had complied with the requirement that it 'review and consider' the evidence. Since the Court of Appeal, in reviewing the decision of the lower court, may inquire only whether the trial court abused its discretion in making its decision, the standard, thus, to determine if discretion has been abused, is whether there was substantial evidence sufficient to support the finding of the court.

In the case at bar, the trial court had substantial evidence to support its finding that the City Council properly reviewed and considered the EIR as required by the CEQA.

IV

Appellants Received a Fair Hearing

(5)Appellants charge that the City Council's decision was arbitrary and capricious in granting approval of the project and that therefore they did not receive a 'fair hearing.' Thus, they charge, the agency committed an abuse of discretion and appeal from such abuse can be made pursuant to Code of Civil Procedure section 1094.5.

As previously noted, Code of Civil Procedure section 1094.5 provides for inquiry into the validity of an administrative order or decision. The inquiry 'shall extend to the questions [among other things] ... whether there was a fair trial.'

Appellants state that they are not arguing that they were not given an opportunity to speak before the City Council, but they 'do argue that they were not given a fair hearing because the City acted in an arbitrary and capricious manner.' Appellants' basis for asserting that the City Council acted in an arbitrary and capricious manner is that on the same day on which the City Council approved respondents' tentative tract map it disapproved another project in the Brentwood area (hereafter Montana Tract). Appellants argue that both projects were based upon the same EIR and that the projects were essentially identical. Therefore, if both projects were actually based upon the same information but opposite decisions were forthcoming, then, they urge, the only reasonable answer is that the City Council acted arbitrarily and capriciously in reaching different decisions.

In support of this premise, appellants argue that the EIR prepared for this property (the Barrington Tract) was utilized in making the decision on the other property (the Montana Tract). That EIR was one of the factors which accounted for the denial of the tract map on the Montana Tract. ***405**

Appellants quote from the EIR in their opening brief as follows: 'The existing vacancy rate in the Brentwood-Pacific Palisades District Plan area, in which this tentative tract is located, is 2.15 per cent. [¶] An Environmental Impact Report, EIR No. 143-80-SUB, has been prepared by the Environmental Review Section of the Planning Department in connection with a similar tract in this area, Tract 39860 for a condominium at 514-524 Barrington Avenue and submitted it to the Council for review and consideration. That EIR has it shown that in the Brentwood area there has been an extreme trend toward condominium development. The analysis in the EIR clearly shows an approximate 36% decrease in the total rental stock if all pending approved tentative tracts are developed as proposed. This is based on data gathered from August, 1978. Condominiums had begun replacing rental units prior to that time, and stock cooperative conversions were not counted, so the total impact is higher than 36%, and will (*sic*) over 40%.'

Appellants note that when disapproving the Montana Tract, the City Council spoke of this data in its findings and yet, when approving the Barrington Tract, spoke of other data (which was also before the City Council) which noted that 'Between December 1978 and December 1980, the total rental housing in Brentwood has decreased by 18 percent.' Since appellants argue that the properties are essentially identical, they urge that the only explanation for the difference in decisions by the City Council and the use of different data in its findings is that the City Council acted arbitrarily and capriciously.

Appellants' argument is not well taken because the City Council had before it much more information than appellants illustrate. Respondents and the real party in interest had placed before the City Council information which illuminated the differences between the two properties. The following are examples of some differences: The Montana Tract had 14 units which were 26 years old. These were to be replaced by a 21-unit condominium. There were three senior citizens in the building and there was opposition to the project not only from the tenants of the building but also from the Brentwood Homeowners Association. The Barrington Tract consisted of 12 units which were 32 years old. Five of the tenants in the Barrington Tract opposed the project at the time the City Council made its decision and as of the appeal all of the units except those five were vacant. There was no opposition to the project by the Brentwood Homeowners Association, nor was there any opposition to the project (other than those five tenants) when the City Council denied the appeal.

Even though the EIR prepared for the Barrington Tract was also used when making the decision on the Montana Tract, the tracts were not identical.***406** The City Council had two projects with some similar information, some identical information (the EIR) and some different information. The fact that the City Council arrived at different decisions concerning the two tracts cannot be characterized as arbitrary and capricious.

Appellants' other contention that they did not receive a fair hearing because of the allegation of an attempt to extort a bribe from the developer in exchange for not opposing the tentative tract approval, is equally without merit. Although various City Council members did comment on this allegation, nevertheless, it is apparent from a review of the entire record that this allegation was set aside and that the final determination by the City Council was based on the substantial merits of the project.

V

The Tract Map Was in Compliance With the General Plan and Thus Complied With the Subdivision Map Act

Government Code section 66473.5 requires a finding by a local agency of consistency with a general or specific plan. It states in part: 'No local agency shall approve a tentative map, ... unless the legislative body shall find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan ... or any specific plan adopted.... [¶] A proposed subdivision shall be consistent with a general plan or a specific plan only if the local agency has officially adopted such a plan and the proposed subdivision or land use is compatible with the objectives, policies, general land uses and programs specified in such a plan.'

(6)Respondent urges that an exact match between the Subdivision Map Act and the tentative tract map is not intended by the Legislature. The respondent city also argues that the requirement is only that the tentative map be in agreement or harmony with the general or specific plan.

The case of *Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875, 881 [170 Cal.Rptr. 342], supports that position when it noted: 'The general plan which a city or county is required to adopt is simply a statement of policy. A general plan or policy, whether it be adopted by governmental entity or private organization serves to provide a standing consistent answer to recurring questions and to act as a *guide* for specific plans or programs. [Citation.]' (Italics added.)

The *Bownds* case, *supra.*, 113 Cal.App.3d 875, 881 was factually similar to this case in that a tenant, who lived in an apartment building which had ***407** been approved for condominium conversion by the city, brought proceedings in mandamus to compel the city to vacate and set aside the approval of the project. Although, the case focused on the consistency and adequacy of the city's general plan in relation to that required by the state rather than, as here, the consistency and adequacy of the project with the city's general plan, the court discussed many of the same issues. The *Bownds* court discussed the topic of 'guidelines' in relation to the housing element of a general plan for the City of Glendale, and held: 'Finally, we turn to the contention that the guidelines promulgated by the department have the effect of law, are binding on the cities and counties and thereby limit the legislative prerogative of the city councils and boards of supervisors. [¶] In our opinion, this is a startling concept indeed.... [¶] ... The term 'guidelines' itself suggests an absence of compulsion. [¶] ... In summary, the decisionmaking power in the area of land use and planning still rests with the local governmental agencies to be exercised within the constraints prescribed by enactments of the state Legislature. When any attack is made upon the exercise of that decisionmaking power and the adequacy of the general plan within which it is to be exercised, a presumption of validity attaches to the actions of the local governmental agency.' (*Id.*, at pp. 885-886.)

(7a)Appellants, on the other hand, urge that the decision of the City Council is inconsistent with the city's housing element and with the Brentwood Community Plan and therefore the City Council abused its discretion in not denying the tentative map. They also argue that the trial court misinterpreted the data before the City Council and thus also erred in finding the tract to be in conformance with the subdivision map act. Appellants cite several code sections to support their argument. These code sections actually illustrate the advisory or guiding nature of the elements of the general plan. The fact that they are guidelines rather than prerequisites, however, is more supportive of respondents' argument than that of appellants.

Although Government Code section 65302 states that the city's general plan 'shall' include a 'housing element' it does not specify how exacting that element must be. The section illustrates further the advisory nature by stating that there are four major 'goals'. 'Goals' by definition are *not* prerequisites for complying with the 'housing element' requirement. Appellants concede that the housing element '[i]s intended ... [t]o also serve as a *guide* for action by the city council in evaluating public and private development with respect to meeting housing needs.' (Italics added.)

Thus, in regard to whether the tract map was consistent with the general plan, there was conflicting evidence before the City Council and when conflicting evidence is present, '[i]t is for the agency to weigh the preponderance ***408** of conflicting evidence. [Citation.] Courts may reverse the agency's decision only if, *based on the evidence before the agency*, a reasonable person could not reach the conclusion reached by the agency.' (*McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175, 186.) (Italics in original.)

Additionally, in compliance with the standard enunciated by this court (*Woodland Hills Residents Assn., Inc. v. City Council* (1975) 44 Cal.App.3d 825 [118 Cal.Rptr. 856]), the City Council issued an express finding that the proposed subdivision tract map was consistent with the district plan prior to its approval of the proposed tract. The trial court, as noted above, could reverse the agency's decision only, if based on the evidence before the agency, a reasonable person could not have reached the same conclusion. The City Council's decision, although based on conflicting evidence, was reasonable and within its discretion, and was supported by its findings which were based on substantial evidence. Based upon the evidence before the agency, the trial court correctly refused to reverse the agency's decision.

(8)The standard of review for the appellate court is as quoted earlier from the seminal case of *Savelli v. Board of Medical Examiners* (1964) 229 Cal.App.2d 124, 132-133 [40 Cal.Rptr. 171]: 'The function of an appellate court is to determine whether the evidence, viewed in the light most favorable to the respondent, sustains the findings subject to review, resolving any reasonable doubts in favor of those findings. [Citation.] In making this determination the appellate court must resolve all conflicts in the evidence in favor of the judgment or decision of the tribunal below and indulge in all legitimate and reasonable inferences to support it. [Citations.] Insofar as the appellate court itself is concerned, the substantial evidence rule obtains whether it is reviewing the findings of the trial court where the latter has exercised independent judgment, or whether the findings involve the decision of an agency or board where the trial court is not authorized by law to exercise its independent judgment. In the former situation, the appellate court is confined to the evidence received by the trial court; in the latter case it is limited to the evidence in the record before such agency or board. [Citation.]'

(7b)In making its decision, the agency had much information before it, including all of the data which appellants assert is important. When reviewing the findings of the agency, the trial court properly resolved all conflicts consistent with the decision and indulged all legitimate and reasonable inferences to support the findings. It, thus, correctly held that the findings were supported by substantial evidence and that the decision was supported by the findings. ***409**

VI

Adequacy of EIR

(9a)Appellants contend that the EIR is inaccurate and inadequate based on four allegations. They claim the EIR (1) does not accurately follow the state guidelines on cumulative adverse impact, (2) does not adequately consider traffic and parking problems, (3) does not adequately discuss the alleged inconsistencies between the project and the general plan, and (4) fails to provide sufficient information on which to base an intelligent decision.

Title 14, Administrative Code section 15151 discusses the standards to be used when assessing the adequacy of an EIR. It says: 'An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.'

(10)Appellants also argue that consistent with *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789 [161 Cal.Rptr. 260] the trial court should have independently reviewed the adequacy of the EIR. However, *Karlson* is distinguishable from this case. In *Karlson*, the appellant was denied his petition for writ of mandate. He requested the trial court to set aside two amendments to the city's general plan because they were internally inconsistent in violation of Government Code section 65300.5 (which required internal consistency within the plan). The appellate court held that the agency action was reviewable under Code of Civil Procedure section 1085, which governs grounds for proper issuance of the writ. Code of Civil Procedure section 1085 states in part: 'It may be issued ... to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right v. to which he is entitled, ...'

However, appellants concede that the action they bring is reviewable subject to Code of Civil Procedure section 1094.5 which governs the issuance of a writ for an inquiry into the validity of a final administrative order or decision. As previously noted, Code of Civil Procedure section 1094.5 subdivision (a) governs: 'Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as a ***410** result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer, ...'

Public Resources Code section 21168 (California Environmental Quality Act), applicable under Code of Civil Procedure section 1094.5, states that: 'Any action or proceeding to attack, review, set aside, void or annul a determination, finding or decision of a public agency, made as a result of a *proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency*, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure. [¶] In any such action, *the court* shall not exercise its independent judgment on the evidence but *shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.*' (Italics added.)

Although *Karlson* notes that where the adequacy of an EIR is questioned, it is independently reviewable on appeal from the agency action, it also notes that the scope of review in that case is Public Resources Code section 21168.5 which concerns actions or proceedings *other* than those under section 21168; in other words, actions or proceedings which were not *made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency* ....' (Pub. Resources Code, § 21168 (italics added); see also

Rural Land Owners Assn. v. City Council (1983) 143 Cal.App.3d 1013[192 Cal.Rptr. 3255].) Here, although the adequacy of the EIR is being questioned, it is questioned only in the sense that it is one portion of a whole proceeding in which, by law, a hearing was required to be given, evidence was required to be taken and discretion in the determination of facts was vested in the public agency. Therefore, the reasoning of the respondents in this regard is more favored. On review the decision of the trial court will be upheld if supported by substantial evidence.

(9b)The question is, however, one of little relevance to this particular case, because even if the evidence provided in the EIR is judged on an independent basis, the EIR is nonetheless adequate.

Appellants' main contention in regard to the adequacy of the EIR is that the EIR does not 'accurately follow the State Guidelines in its discussion of the cumulative adverse impact that demolitions and conversions have had on the rental market in Brentwood.' They note that the state guidelines list three elements which are necessary to an adequate discussion of cumulative impacts. They are (1) a list of projects producing related or cumulative ***411** impacts, including those projects outside the control of the agency, (2) a summary of the expected environmental effects to be produced by those projects with specific reference to additional information where that information is available, and (3) a reasonable analysis of the cumulative impacts of the relevant projects. Further, they quote the guidelines as saying, '[s]pecific reference to related projects, both public and private, both existent and planned, in the region should also be included, for purposes of examining the possible cumulative impact of such projects.... The EIR shall discuss any inconsistencies between the proposed project and the applicable general plans and regional plans.'

The EIR has exhaustively set out all of the requirements of the state guidelines including (1) a list of 93 related projects having potential cumulative impacts, (2) a 4-page analysis which summarizes the adverse environmental impacts (including the cumulative impacts of the relevant projects), the recommended mitigation measures and any unmitigated adverse impacts, and (3) an 11-page analysis and discussion including final comments upon, among other things, appellants' criticisms of the alleged inconsistencies between the project and the applicable general plan and regional plan, and the alleged miscalculation of the data used in the EIR.

Appellants argue that the EIR only considers the adverse cumulative effect of demolitions and conversions between December 1978 and December 1980, and thus does not accurately measure the project's adverse impact on the loss or rental units in the area. The final EIR addresses appellants' concerns on an individual basis and comments upon each of them, and notes that all of the addresses which appellants claim were omitted from the project were checked, considered and nevertheless, the planning commission maintains that the figures and impact estimates were correct.

The court in *Residents Ad Hoc Stadium Com. v. Board of Trustees* (1979) 89 Cal.App.3d 274, 285 [152 Cal.Rptr. 585], approved the language of *Environmental Defense Fund v. Corps of Eng., U.S. Army* (8th Cir. 1972) 470 F.2d 289, 297.The court in the *Environmental Defense Fund* case was discussing possible error in EIR statistics when it noted: ''[i]t is doubtful that any agency, however objective, however sincere, however well-staffed, and however well-financed, could come up with a perfect environmental impact statement in connection with any major project. Further studies, evaluations and analyses by experts are almost certain to reveal inadequacies or deficiencies. But even such deficiencies and inadequacies, discovered after the fact, can be brought to the attention of the decision-makers, ...' [Citations.]'

The court in *Residents Ad Hoc Stadium Com., supra.*, 89 Cal.App.3d 274, holding that the EIR was adequate against a claim by appellants that it was, ***412** at most, a post hoc rationalization of the project, discussed the differences between its fact pattern and that of the *Environmental Defense Fund* case, *supra.*. In response to the *Ad Hoc* appellants' claim that all the information considered must be in the EIR report (as did appellants in this case), they noted: 'The statement in *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal.App.3d 695, 706 [104 Cal.Rptr. 197], that 'It should be understood that whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report [citation]' is a correct statement of the law but is not applicable to this proceeding. In *Environmental Defense Fund, Inc.* and *Green County Planning Board*, the decision-makers certified the EIR as adequate and decided to proceed with the project without conducting a public hearing at which objections to the EIR and the project could be presented and considered. Here, the Trustees were totally solicitous of public opinion and delayed their decision until a hearing was held at which all interested persons could voice their reaction to the EIR.... The comments were incorporated in the EIR, and the Trustees did, in fact, take a 'hard look' at all presented environmental consequences of the proposed stadium. [¶] ... Absolute perfection is not required; what is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. It is only required that the officials and agencies make an objective, good faith effort to comply.... [T]he court does not seek to impose unreasonable extremes or to interject itself within the area of discretion as to the choice of the action to be taken. ([Citations.]' (*Id.*, at pp. 285, 286, 287.)

Since appellants do not assert that they were not allowed to present their objections to the agency, their complaint essentially is a disapproval of the method of calculating the figures used in the EIR. Since the committee had been apprised of appellants' claim regarding the proper method of calculating the rental loss, and it had accounted for all of the properties cited by appellants, it was not an abuse of discretion to give more weight to one set of 'experts' than to another.

(11a)The court in *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 805 [161 Cal.Rptr. 260], held: ''An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation ... need not be exhaustive.... *Disagreement among experts does not make an EIR inadequate.* The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure. [§ 15150.]'' (Italics added.) ***413**

(9c)Here, the city planning department officers do qualify as experts since this type of analysis is their business. Even giving the appellants the benefit of the doubt and assuming that they may have had an expert compile and analyze their data for them, the fact that there are differing opinions arising from the same pool of information is not grounds for holding the EIR inadequate. It is clear that both sides had the same information because the appellants gave to the Department, the Commission, and the Committee their analyses and comments on this issue. Then the Department and the Committee and the City Council specifically responded to the appellants' charges with the city's analysis and comments. They did this both orally at public hearings and in written communications and documents.

(11b)Therefore, as noted in *Karlson* (*supra.*, at p. 807) quoting from *City of Rancho Palos Verdes v. City Council* (1976) 59 Cal.App.3d 869, 892 [129 Cal.Rptr. 173], '[i]t is not required 'that the body acting on an EIR correctly solve a dispute among experts.' All that is required is that in substance the material in the EIR be responsive to the opposition, particularly where opinion and not fact is in issue. [Citation.]'

(9d)Furthermore, even if it is assumed that the figures were inaccurate, the Commission, the Committee, and the full City Council, had all of the data before them when reviewing and considering the information on the project, including the EIR, and appellants' comments to it and the Committee's responses to the comments, before making their decision. Thus, the City Council had substantial evidence to support its findings when deciding on the project. Where, as here, the evidence was conflicting, the City Council was permitted to give more weight to some of the evidence and to favor the opinions and estimates of some of the experts over the others.

Appellants' argument as to the differing data and opinions on the issues of parking and circulation in the area follows the same rationale as above. There was conflicting evidence and conflicting opinion and thus, the City Council was entitled to choose to believe one side more than the other. '[D]isagreements among experts do not require the invalidation of an EIR. [Citations.]' (*San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584, 594 [122 Cal.Rptr. 100].)

Appellants' final argument regarding the adequacy of the EIR is that it fails to discuss inconsistencies between the tentative tract map and the general plan or specific plan as mandated by the Subdivision Map Act. As previously discussed, the City Council issued an express finding that the tentative tract map *was consistent* with the district plan before approving the tract. Since it has been determined that there was substantial evidence ***414** to support that finding, the City Council's decision and findings remain undisturbed. Therefore, this contention of appellants is without merit.

In summary, the City Council considered and reviewed the EIR's (draft, proposed and final), and conducted extensive public hearings on the project at which appellants were permitted to testify. The City Council considered the comments along with their Committee's responses to those comments, and finally the City Council made a decision based upon all of the evidence as well as expert opinions on the subject. The decision properly certified the final EIR, adopted a statement of overriding considerations, denied the appeal and adopted the findings and modified conditions to the tentative tract map approval which were recommended by the Committee. The findings properly 'bridge[d] the analytic gap between the raw evidence and ultimate decision or order' (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836, 522 P.2d 12]) which findings were supported by substantial evidence.

During oral argument, appellants again urged that since the trial judge said that the EIR was inaccurate, he should have found it to be inadequate. While the trial judge is quoted in the transcript as stating 'I don't think that the EIR is accurate,' it is evident from a careful reading of the entire record that the trial judge did find the EIR to be adequate. The reasoning in *Residents Ad Hoc Stadium Com. v. Board of Trustees* (1979) 89 Cal.App.3d 274 [152 Cal.Rptr. 585] supports the trial court's reasoning that an EIR deficient in one minor respect may be nonetheless adequate in its entirety especially when, as here, the trial court finds 'that it [the City Council] reviewed the EIR and fully considered it ...' and 'that the City Council did estimate their project's impact on the area ...' and then concluded that the decision of the City Council was supported by the findings.

After oral argument, appellants directed the court's attention to the case of *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61 [198 Cal.Rptr. 634]. (Hereinafter *SFRG*.)

In that case the court found the EIR to be inadequate based upon a finding that in calculating the cumulative impacts the commission did not include in its analysis other related projects currently under environmental review. The commission acknowledged 16.2 million square feet of new development but analyzed only 6.3 million. The court found that the EIR thus did not reflect the true severity and significance of the impact on the environment. 'The disparity between what was considered and what was known is the basis upon which we find an abuse of discretion.' (*Id.*, at p. 77.) We agree with the *SFRG* court that '[a]n omission of such magnitude inevitably renders an analysis of cumulative impacts inaccurate and inadequate because ***415** the severity and significance of the impacts will perforce, be gravely understated.' (*Id.*. at pp. 77-78.)We also agree that ''[t]he discussion of cumulative impacts should be guided by a standard of practicality and reasonableness.'' (*Id.*, at p. 72.) As pointed out in footnote 18, '[w]e are also mindful of the fact that, under section 15023.5 of the Guidelines, a cumulative analysis need not provide as great detail as the analysis of the direct impacts of the project being evaluated in the EIR. (Guidelines, § 15023.5, subd. (c).) However, we do not consider the omission of up to 60 percent of the projects that should have been analyzed in the cumulative analyses to be merely a problem of insufficient details.' (*Id.*, at p. 81.)

In the case at hand, the alleged underestimation of the decreased rental housing was insignificant when viewing the EIR as a whole, and thus did not provide a basis to conclude that the EIR was inadequate. '... [A]n EIR need not be exhaustive; ... its sufficiency must be reviewed in light of what is reasonably feasible; and ... we should look for adequacy and completeness, not perfection.' (*Id.*, at pp. 80-81.)

In conclusion, the trial court, as detailed above had substantial evidence on which to base its decision, and properly found that the City Council's decision was supported by substantial evidence and affirmed its decision.

The judgment is affirmed. The temporary stay order is hereby vacated.

Spencer, P. J., and Dalsimer, J., concurred.
A petition for a rehearing was denied April 19, 1984, and appellants' petition for a hearing by the Supreme Court was denied July 12, 1984. ***416**

Cal.App.2.Dist.
Greenebaum v. City of Los Angeles
153 Cal.App.3d 391, 200 Cal.Rptr. 237

END OF DOCUMENT

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 8630-8634

8630. (a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.

(b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.

(c) (1) The governing body shall review, at its regularly scheduled meetings until the local emergency is terminated, the need for continuing the local emergency. However, in no event shall a review take place more than 21 days after the previous review.

(2) Notwithstanding paragraph (1), if the governing body meets weekly, it shall review the need for continuing the local emergency at least every 14 days, until the local emergency is terminated.

(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

8631. In periods of local emergency, political subdivisions have full power to provide mutual aid to any affected area in accordance with local ordinances, resolutions, emergency plans, or agreements therefor.

8632. State agencies may provide mutual aid, including personnel, equipment, and other available resources, to assist political subdivisions during a local emergency or in accordance with mutual aid agreements or at the direction of the Governor.

8633. In the absence of a state of war emergency or state of emergency, the cost of extraordinary services incurred by political subdivisions in executing mutual aid agreements shall constitute a legal charge against the state when approved by the Governor in accordance with orders and regulations promulgated as prescribed in Section 8567.

8634. During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread publicity and notice.

The authorization granted by this chapter to impose a curfew shall not be construed as restricting in any manner the existing authority of counties and cities and any city and county to impose pursuant to the police power a curfew for any other lawful purpose.

EXHIBIT 9

Miller v. United Airlines, Inc.
Cal.App.6.Dist.
ANNE E. MILLER, Plaintiff and Appellant,
v.
UNITED AIRLINES, INC., et al., Defendants and Respondents.
No. A025579.

Court of Appeal, Sixth District, California.
Jun 21, 1985.

SUMMARY

The trial court granted summary judgment in favor of an airline, in an action by an airline attendant for invasion of privacy, slander, infliction of emotional distress, and other causes of action. The matter arose out of the circulation of a petition which falsely criticized the airline attendant's work and character, and the procedures followed by the airline in investigating the allegations in the petition. There was also a cause of action against the employer for a violation of the attendant's civil rights, based upon age discrimination. The trial court found that the attendant's exclusive remedy for the matters set forth in all of the causes of action, other than the age discrimination cause of action, was the grievance and arbitration process prescribed in a collective bargaining agreement between the airline and the attendant's union. As to the age discrimination cause of action, it was found that the attendant had not exhausted an administrative remedy under the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.). (Superior Court of Santa Clara County, No. 516445, Homer B. Thompson, Judge.)

The Court of Appeal affirmed. The court noted that in some situations the Railway Labor Act (RLA) (45 U.S.C. § 151 et seq.) establishes the exclusive mechanism for addressing and resolving the grievances of airline and railroad employees over issues related to their employment. An individual who litigates a claim before an adjustment board on the merits may not relitigate the matter in an independent judicial proceeding. Thus, the attendant's exclusive remedy, other than as to the age discrimination cause of action, was the grievance and arbitration process prescribed in the collective bargaining agreement. The dispute concerned working conditions and thus the RLA mandates that the attendant must pursue her remedies as set forth in the collective bargaining agreement. Accordingly, federal law preempted state law. As to the age discrimination claim, the court held that the trial court properly dismissed such cause of action since the attendant failed to exhaust her administrative remedies under the Fair Employment and Housing Act. (Opinion by Agliano, J., with Panelli, P. J., and Brauer, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Labor § 78--Effect of Federal Labor Laws on State Jurisdiction--Federal Preemption--Exclusivity of Remedy--Collective Bargaining Agreement--Dismissal of Action.
In an action by an airline attendant against her employer for invasion of privacy, slander, infliction of emotional distress and other causes of action, arising out of the circulation of a petition which falsely criticized her work and character and the procedures followed by the airline investigating the allegations in the petition, the trial court properly dismissed such causes of action on the ground that they were barred by the Railway Labor Act (RLA) (45 U.S.C. § 151 et seq.). The attendant's exclusive remedy for such matters was the grievance and arbitration process prescribed in a collective bargaining agreement between the airline and her union. The dispute concerned working conditions and thus the RLA mandates that she must pursue her remedies as set forth in such agreement. Accordingly, federal law preempted state law.

(2) Labor § 37--Collective Bargaining--Railway Labor Act--Federal Law.
The provisions of the collective bargaining agreements negotiated between employers and their employee unions under the Railway Labor Act (45 U.S.C. § 151 et seq.) are made pursuant to federal law.

(3) Labor § 76--Effect of Federal Labor Laws on State Jurisdiction-- Exclusivity of Grievance Resolution.
In some situations, the Railway Labor Act (45 U.S.C. § 151 et seq.) establishes the exclusive mechanism for addressing and resolving the grievances of airline and railroad employees over issues related to their employment. An individual who litigates a claim before an adjustment board on the merits may not relitigate the matter in an independent judicial proceeding.
[See **Cal.Jur.3d**, Labor, § 206 et seq.; **Am.Jur.2d**, Labor and Labor Relations, § 1714 et seq.]
(4) Labor § 78--Effect of Federal Laws on State Jurisdiction--Federal Preemption--Availability of Damages.
The availability of damages under state law does not alter federal preemption findings.

(5a, 5b) Civil Rights § 3--Employment--Age Discrimination--Exhaustion of Administrative Remedies--Dismissal of Action.
In an action by an airline attendant against her employer for age discrimination in violation of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), the trial court properly dismissed such cause of action since the attendant failed to exhaust her administrative remedies under the FEHA. The attendant's complaint did not allege that she had filed a charge with the Department of Fair Employment and Housing, and in her deposition she stated that she had not done so. Accordingly, she could not maintain a civil action alleging violations of the FEHA until after she had exhausted her administrative remedies pursuant to the FEHA.

(6) Civil Rights § 3--Employment--Discrimination--Action Under a Fair Employment and Housing Act--Exhaustion of Administrative Remedies.
An individual must exhaust his or her administrative remedies before filing a civil action under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.). Only then may that person sue in the superior court under such provisions.

(7) Administrative Law § 85--Judicial Review and Relief--Limitation on Availability--Exhaustion of Administrative Remedies--Dismissal of Action.
The failure to exhaust an administrative remedy is a jurisdictional, not a procedural, defect. Thus, instead of abating an action as premature, a trial court must grant summary judgment and dismiss the suit upon a finding that a party has not exhausted his or her administrative remedies.

COUNSEL
M. Jean Starcevich, Susan R. Reischl and Robert L. Mezzetti for Plaintiff and Appellant.
Gilmore F. Diekmann, Jr., Elliot L. Bien, Richard R. Dale and Bronson, Bronson & McKinnon for Defendants and Respondents. ***881** AGLIANO, J.

Introduction

Plaintiff Anne Miller appeals from a summary judgment in favor of her employer United Airlines, Inc. (United) and fellow employees, Laurie Whipple, Susan Remsberg, Karen Burke and Edda Beering.

Plaintiff's 10 causes of action included claims of invasion of privacy, libel, slander, interference with contract, intentional and negligent infliction of emotional distress, negligence, breach of implied covenant of good faith and fair dealing, false imprisonment, and violation of civil rights. She alleged resultant humiliation, mental anguish, emotional and physical distress and mental and physical injury requiring medical treatment with hospital and doctor expense.

The trial court found, on facts essentially undisputed for summary judgment purposes, that plaintiff's exclusive remedy for the matters set forth in nine of her ten causes of action was the grievance and arbitration process prescribed in a collective bargaining agreement between United and plaintiff's union, and as to the tenth cause of action plaintiff had not exhausted an administrative remedy under the California Fair Employment and Housing Act. The trial court determined as an alternative ground for judgment that plaintiff's claims were covered exclusively by the California Worker's Compensation Act.

On appeal, we conclude that summary judgment was properly entered in favor of defendants. Plaintiff's exclusive remedy lies within the procedures outlined in the collective bargaining agreement, and plaintiff has not exhausted her administrative remedies under the Fair Employment and Housing Act. Having reached this conclusion, we do not decide whether plaintiff's claims are covered exclusively by the Worker's Compensation Act.

It is first noted that plaintiff's brief argues the liability of United and not that of the individual defendants. Under these circumstances, the appeal as it relates to these individual plaintiffs is deemed abandoned.

The Factual Contentions

The deposition testimony of plaintiff supplies the facts proffered by defendants in aid of their summary judgment motion. ***882**

Plaintiff is a senior flight attendant who, at age 20, commenced her employment with United in 1960. The genesis of plaintiff's complaint was a 1982 written petition to United by some of her fellow flight attendants, including defendant Laurie Whipple, listing a number of complaints concerning plaintiff's performance as a first flight attendant. Ms. Whipple, a junior flight attendant, had circulated the petition, urging as an inducement, the removal of seniors to make room for junior attendants. Plaintiff was told the document was highly critical of her work and character.

Defendant Sue Remsberg, employed in United's Inflight Services, called plaintiff to arrange a meeting. Plaintiff asked but was not told the purpose of the meeting. Had she known, she would have been accompanied by a union representative to represent her. Plaintiff attempted suicide three days before the scheduled meeting because she felt distraught about the forthcoming meeting, its mysterious nature, two prior cancellations of the meeting and the information she had gained of the petition. She was also upset at her union's advice that nothing could be done about the petition, because she had not been disciplined, and the petition was not part of her record.

Plaintiff finally met with Remsberg on June 21, 1982. Plaintiff was provided a summary of the petition. Ms. Remsberg told plaintiff that if any of the matters set forth in the petition were true, or believed by her to be true, she would see to it that plaintiff was fired. Plaintiff asked to see the original petition and the names on it but her request was denied. She asked to have those who signed the petition brought into the United office so that she could confront and question them. This request was also denied. Ms. Remsberg told plaintiff she was receiving an oral warning and that she would be observed in the future.

Plaintiff felt involuntarily detained in the meeting room prior to being dismissed from the meeting by Ms. Remsberg, a representative of management.

On July 24, 1982, plaintiff was required to participate in a counseling session, after which she was told not to worry, that nothing adverse would appear in her personnel file. However, she later discovered that the July 24 session had been noted on her counseling performance record and she was also advised of new articles of conduct and disciplinary measures applicable to an employee in her position.

On October 11, 1982, plaintiff attended another counseling session in which she was advised of a "ghost ride" observation of her performance on a flight. In the opinion of the observer, plaintiff met basic expectations for a United employee. Nevertheless, Remsberg gave her an oral warning. ***883**

On or about October 22, 1982, an "onion" letter was sent to United by a passenger complaining that plaintiff had been discourteous, rude and offensive on a certain flight from Hawaii. It turned out that plaintiff was not on the flight, leading plaintiff to infer that the offended passenger had been given plaintiff's name rather than that of the attendant whose conduct generated the complaint.

During the period of time plaintiff was subjected to the described treatment, United passengers had written laudatory letters concerning plaintiff's performance. Known in the industry as "orchid" letters, they were attached to plaintiff's declaration in opposition to the defendants' motion for summary judgment.

At a March 14, 1983 counseling session, plaintiff was again advised she had been observed by a "ghost rider." This observer reported plaintiff was sitting in "seat 5B conversing with passenger [in seat] 5A from 2:58 pm until 3:41 pm, a total of 43 [minutes]," while other passengers were left unattended. The contention was not true, since no passenger occupied seat 5A on this flight and plaintiff had saved the documentation to prove it.

Plaintiff alleged subjection to harassment on other occasions as well. She was called into the office unexpectedly for "off the record" discussions and interrogations. Also, she and her husband were telephoned at home a number of times.

Plaintiff claimed the treatment she was exposed to was part of United's campaign to force senior employees out of its workforce and reduce its costs. Plaintiff overheard two supervisors discuss the use of "ghost riders" on the flights of senior attendants as part of the campaign. Two senior flight attendants with 25 years or more experience had been similarly treated and one of them resigned. Plaintiff had six years remaining before full retirement.

Plaintiff testified that the conduct of United and her fellow employees caused her attempted suicide, anxiety, doubts as to her ability, nervous tension, headaches, stomach pains, back aches, and neck aches. Her career was severely damaged by destruction of her working relationship with management. Plaintiff's flying partners became nervous because they knew she was "targeted" for surveillance by management. The harassment caused her to relinquish her position as first flight attendant which cost her approximately $200 a month in income.

Plaintiff filed a grievance with the Systems Board of Adjustment as provided for in the collective bargaining agreement between United and the ***884** Association of Flight Attendants. The grievance process was still pending when she filed the instant action.

Discussion

(1a)Plaintiff contends that the trial court erred in determining that her first through ninth causes of action are barred by the provisions of the Railway Labor Act (RLA).

The Railway Labor Act, 45 United States Code section 151 et seq., governs the employment relationship between airlines engaged in interstate commerce and their employees. [FN1] A primary purpose of the RLA is to provide uniform regulations applicable to the industry nationwide. In referring to congressional considerations relating to this legislation, the Supreme Court in *California v. Taylor* (1957) 353 U.S. 553, at pages 567-568, footnote 15 [1 L.Ed.2d 1034, at page 1043, 77 S.Ct. 1037], quoted from the report of the House Committee on Interstate and Foreign Commerce: "'Railroads and airlines are direct instrumentalities of interstate commerce; the Railway Labor Act requires collective bargaining on a system-wide basis; agreements are uniformly negotiated for an entire railroad system and regulate the rates of pay, rules of working conditions of employees in many States; ...' (H.R. Rep. No. 2811, 81st Cong., 2d Sess. 5.)"

FN1 Congress extended coverage of the Railway Labor Act to airlines in 1936. (45 U.S.C. § 181.)

45 United States Code section 151a itself defines some of the purposes of the RLA: "(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." In order to implement these purposes, railroads and airlines have a duty "to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise." (45 U.S.C. § 152.)Employers also have an obligation to establish a grievance procedure which employers and their employees must follow in resolving employment disputes. Section 153 requires that disputes between railroads and their employees be submitted to the National Railroad Adjustment Board or to a system, group, or regional board. Section 184 provides that disputes between employees and airlines "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by ***885** either party to an appropriate adjustment board." The Supreme Court has defined the disputes to be handled by the board of adjustment as those "involving grievances, [which] affect the smaller differences which inevitably appear in the carrying out of major agreements and policies or [which] arise incidentally in the course of an employment. They represent specific maladjustments of a detailed or individual quality ... [b]ecause of their comparatively minor character and the general improbability of their causing interruption of peaceful relations and of traffic, the 1934 Act sets them apart from the major disputes and provides for very different treatment." (*Elgin, J. & E. R. Co. v. Burley* (1945) 325 U.S. 711, 724 [89 L.Ed. 1886, 1895, 65 S.Ct. 1282].) Courts apply the RLA to railroad and airline adjustment boards in the same manner, even though different provisions of the RLA govern each industry. (See, e.g., *Machinists v. Central Airlines* (1963) 372 U.S. 682 [10 L.Ed.2d 67, 83 S.Ct. 956]; *Bernhardt v. American Airlines, Inc.* (9th Cir. 1975) 511 F.2d 1219, 1220, fn. 1.)

(2)It has been held that the provisions of the collective bargaining agreements negotiated between employers and their employee unions under the RLA are made pursuant to federal law. (*Railway Employes' Dept. v. Hanson* (1956) 351 U.S. 225, 232 [100 L.Ed. 1112, 1130-1131, 76 S.Ct. 714].) (3)The Supreme Court has also held that in some situations the RLA establishes the exclusive mechanism for addressing and resolving the grievances of airline and railroad employees over issues related to their employment. An individual who litigates a claim before an adjustment board on the merits may not relitigate the matter in an independent judicial proceeding. (*Andrews v. Louisville & Nashville R. Co.* (1972) 406 U.S. 320, 325 [32 L.Ed.2d 95, 100, 92 S.Ct. 1562].)

In *Gunther v. San Diego & A. E. R. Co.* (1965) 382 U.S. 257 [15 L.Ed.2d 308, 86 S.Ct. 368], the court addressed the issue of a federal court's rejection of the Railway Adjustment Board's interpretation of a collective bargaining agreement. The court reviewed prior authority applicable to the RLA, observing that: "This Court time and again has emphasized and re-emphasized that Congress intended minor grievances of railroad workers to be decided finally by the Railroad Adjustment Board. In *Brotherhood of Railroad Trainmen v. Chicago River & Indiana R. Co.*, 353 U.S. 30, the Court gave a Board decision the same finality that a decision of arbitrators would have. In *Union Pacific R. Co. v. Price*, 360 U.S. 601, the Court discussed the legislative history of the Act at length and pointed out that it 'was designed for effective and final decision of grievances which arise daily' and that its 'statutory scheme cannot realistically be squared with the contention that Congress did not purpose to foreclose litigation in the courts over grievances submitted to and disposed of by the Board ....' 360 U.S., at 616.Also in ***886***Locomotive Engineers v. Louisville & Nashville R. Co.*, 373 U.S. 33, the Court said that prior decisions of this Court had made it clear that the Adjustment Board provisions were to be considered as 'compulsory arbitration in this limited field,' p. 40, 'the complete and final means for settling minor disputes,' p. 39, and 'a mandatory, exclusive, and comprehensive system for resolving grievance disputes.' P. 38." (*Id.*, at pp. 263-264 [15 L.Ed.2d at p. 312].)

In a case similar to the instant one, a railroad employee filed an action in state court based on state law for breach of contract. (*Andrews*, *supra.*, 406 U.S. 320.)The suit was dismissed on the ground that the employee failed to exhaust his administrative remedies pursuant to the RLA. The Supreme Court affirmed after examining the issue of whether the right asserted by the employee had its source in the collective bargaining agreement. The court stated that "the notion that the grievance and arbitration procedures provided for minor disputes in the Railway Labor Act are optional, to be availed of as the employee or the carrier chooses, was never good history and is no longer good law." (*Id.*, at p. 322 [32 L.Ed.2d at p. 98].) The court also observed that the administrative remedy outlined in the RLA is not derived from any contractual relationship between the parties, but from the RLA itself. (*Id.*, at p. 323 [32 L.Ed.2d at pp. 98-99].)

(1b)In the instant case, there is a collective bargaining agreement between United and the Association of Flight Attendants (AFA). Plaintiff is a member of the AFA. The agreement outlines the procedures relating to the discipline of flight attendants and the processing of flight attendants' grievances. Flight attendants' complaints regarding discipline, contract matters, company policies and "any action of the company which affects her/him" are subject to the grievance procedures. Pursuant to the RLA, the agreement also establishes a System Board of Adjustment to resolve disputes between United and its employees after certain grievance procedures have been exhausted. Plaintiff concedes that she is covered by the collective bargaining agreement and that she has filed grievances regarding the matters included in her complaint. The grievances are being processed, however, the System Board of Adjustment has not yet ruled upon them. Plaintiff's grievances consist essentially of the circulation of a petition which falsely criticizes her work and character and the procedures followed by United in investigating the allegations in the petition. These grievances involve a dispute over the interpretation of the collective bargaining agreement, that is, whether appropriate procedures have been followed when a flight attendant's performance is considered inadequate either by her employer or her fellow employees. This dispute concerns working conditions and thus the RLA mandates that plaintiff must pursue her remedies as set forth in the collective bargaining agreement. ***887**

Plaintiff does not attempt to refute or distinguish any of the authorities cited by defendants to defend their claim that the RLA bars plaintiff's first through ninth causes of action. Instead, she argues that since she has no adequate remedy for emotional and physical distress under the collective bargaining agreement between United and AFA, she may bring a civil action based on state tort and contract principles in state court. However, none of the cases upon which she relies stand for this proposition.

Our review of the relevant case authority persuades us that plaintiff's contention has no merit, because federal law preempts state law in the case at bar.

In the interest of national uniformity, federal law deprives state courts of jurisdiction to hear controversies in certain areas of labor relations. In *San Diego Unions v. Garmon* (1959) 359 U.S. 236 [3

L.Ed.2d 775, 79 S.Ct. 773], the court observed that, "[w]hen the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the States from acting." (*Id.*, at p. 243 [3 L.Ed.2d at p. 782].) Two exceptions were recognized: "where the activity regulated was a merely peripheral concern of the Labor Management Relations Act" and "where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act." (*Id.*, at pp. 243-244 [3 L.Ed.2d at p. 782].)

Cases decided after *Garmon* and dealing specifically with the RLA define more precisely when state regulation is preempted by federal law. In *Magnuson v. Burlington Northern, Inc.* (D.Mont. 1976) 413 F.Supp. 870 (affd. (9th Cir. 1978) 576 F.2d 1367,cert. den.(1978) 439 U.S. 930 [58 L.Ed.2d 323, 99 S.Ct. 318]), a railroad employee sued his employer in state court for intentional infliction of emotional distress. The court held that plaintiff's claim was governed by federal, not state, law, noting "[t]he plaintiff's employment rights were created by and are subject to the Railway Labor Act and therefore are governed by federal labor law, which is paramount to state law." (*Id.*, at p. 872.)The plaintiff appealed contending that his action was in tort, rather than premised on the collective bargaining agreement. The court rejected this contention and affirmed the trial court after finding that the claim involved the conduct of the employer and other employees during the investigation of plaintiff's performance. "Every employee who believes he has a legitimate grievance will doubtless have some emotional anguish occasioned by his belief that he has been wronged. Artful pleading cannot conceal the reality that the gravamen of the complaint is wrongful discharge. If the pleading of emotional injury permitted aggrieved employees ***888** to avoid the impact of the R.L.A., the congressional purpose of providing a comprehensive federal scheme for the settlement of employer-employee disputes in the railroad industry, without resort to the courts, would be thwarted." (576 F.2d at p. 1369.)

A situation similar to the present one arose in *Macy v. Trans World Airlines, Inc.* (D.Md. 1974) 381 F.Supp. 142.In that case, the employee sought damages for alleged libelous and defamatory statements made while the employee was pursuing his claims under the collective bargaining agreement. The court rejected plaintiff's contention that he be allowed to proceed in state court. "If a party to a Collective Bargaining Agreement, in acting to enforce rights through procedures mandated by the Collective Bargaining Agreement and the Railway Labor Act, can, by complying with the requirements of said agreement and statute, be held subject to an action in libel for the acts mandated by said statute and agreement, the federal policies expressed in the Railway Labor Act would be substantially jeopardized." (*Id.*, at p. 148.)Thus, the court held that its jurisdiction over plaintiff's tort claims was preempted by federal law.

In *Majors v. U.S. Air., Inc.* (D.Md. 1981) 525 F.Supp. 853, an employee brought suit for false imprisonment and defamation. Relying on *Farmer v. United Brotherhood of Carpenters* (1977) 430 U.S. 290 [51 L.Ed.2d 338, 97 S.Ct. 1056], he argued that his action fell within the exception to the general preemption rule, because the state had a substantial interest in protecting its citizens from the type of conduct engaged in by the employer. The court found, however, that assertion of its jurisdiction would interfere with the federal regulatory scheme. "As in *Magnuson*, Majors is complaining about allegedly tortious conduct committed in the course of a company investigation. So long as his claim is founded on some incident of the employment relation, it is immaterial, for purposes of coverage by the Railway Labor Act, whether the claim is expressly covered by the collective bargaining agreement, or is independent of that agreement. (*Elgin J. & E. Ry. v. Burley*, 325 U.S. 711, 723, 65 S.Ct.

1282, 1289, 89 L.Ed. 1886 (1945). Investigations of suspected thefts of company property is a normal incident of any employment relationship. This is especially so where, as here, theft is a grounds for discharge under the collective bargaining agreement. [Fn. omitted.] Therefore, although that agreement does not speak to the procedures that govern such investigations, the dispute at issue bears a not insubstantial relationship to the labor contract, and this Court's jurisdiction is preempted. Accordingly, defendant's motion for summary judgment will be granted." (*Majors*, *supra.*, 525 F.Supp. at p. 857.)

As in *Magnuson* and *Macy*, both *supra.*, plaintiff's claims deal with the conduct of her employer and fellow employees during the period when her ***889** work performance was being evaluated and when she pursued her grievances under the collective bargaining agreement. The claims concern the interpretation of the collective bargaining agreement itself and thus are not "merely a peripheral concern" of the RLA. Nor do we find that the claims involve what *Garmon* referred to as "conduct [which] touch[es] interests so deeply rooted in local feeling and responsibility" that states are not precluded from regulating in this area of labor relations. (*Garmon*, *supra.*, 359 U.S. 236, 243, 244 [3 L.Ed.2d 775, 782].) United may evaluate plaintiff's performance and the procedures by which it may do so are outlined fully in the collective bargaining agreement. While plaintiff has every right to object to the evaluation process, it is the collective bargaining agreement which sets forth the procedures for resolving such a dispute. To allow plaintiff to characterize her claim as one based on state tort and contract principles would enable her to frustrate the comprehensive federal scheme for resolution of disputes in the airline industry.

(4)We also note that the availability of damages under state law does not alter federal preemption findings. (See, e.g., *San Diego Unions v. Garmon*, *supra.*, 359 U.S. 236, 246-247 [3 L.Ed.2d 775, 783-784];*Magnuson v. Burlington Northern, Inc.*, *supra.*, 576 F.2d 1367, 1369.)

(1c)Thus, we conclude that federal law preempts state law where the plaintiff's claims are inextricably tied to the procedures set forth in the collective bargaining agreement. The trial court properly dismissed plaintiff's first through ninth causes of action on the ground that they were barred by the RLA.

(5a)Plaintiff also contends that she exhausted her administrative remedies as to her 10th cause of action, and accordingly summary judgment in favor of defendants was improper. Plaintiff's 10th cause of action alleged that she was the victim of age discrimination in violation of the Fair Employment and Housing Act (FEHA).

Government Code section 12900 et seq., sets forth procedures to be followed when a complaint is filed under the FEHA. Government Code section 12965, subdivision (b), provides as follows: "If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify, in writing, the person claiming to be aggrieved. Such notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization or employment agency named in the verified complaint within one year from the date of such notice. The superior, municipal, and justice courts of the State of California shall have jurisdiction of such actions ...." ***890**

(6)In *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211 [185 Cal.Rptr. 270, 649 P.2d 912], the court confirmed that an individual must exhaust his or her administrative remedies before filing a civil action. Having summarized the procedures that an individual must follow within the department, the court stated that "[o]nly then may that person sue in the superior court 'under this part.'" (*Id.*, at p. 214.)

(7)The failure to exhaust an administrative remedy is a jurisdictional, not a procedural, defect. Thus, instead of abating an action as premature, a trial court must grant summary judgment and dismiss the suit upon a finding that a party has not exhausted his or her administrative remedies. (*Wilkinson v. Norcal Mutual Ins. Co.* (1979) 98 Cal.App.3d 307, 318 [159 Cal.Rptr. 416].)

(5b)In the instant case, plaintiff's complaint did not allege that she had filed a charge with the Department of Fair Employment and Housing (DFEH) and in her deposition she stated that she had not done so. Accordingly, she could not maintain a civil action alleging violations of the FEHA until after she had exhausted her administrative remedies pursuant to the FEHA. The trial court properly granted summary judgment in favor of defendants.

However, plaintiff contends that her motion for reconsideration pursuant to Code of Civil Procedure section 1008, subdivision (a), should have been granted. The trial court issued its order granting defendants' motion for summary judgment and dismissing plaintiff's claim on September 22, 1983. Plaintiff received a copy of the order on September 26, 1983. On October 13, 1983, plaintiff filed her motion for reconsideration. She attached a copy of the right-to-sue letter in which the DFEH notified her that she could bring an action in superior court.

Code of Civil Procedure section 1008, subdivision (a), provides: "When an application for an order has been made to a judge, or to the court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within ten (10) days after knowledge of the order and based upon an alleged different state of facts may, make application to the same judge who made the order, to reconsider the matter and modify, amend or revoke the prior order."

In the case at bar, plaintiff's motion for reconsideration was not filed in a timely manner. There is nothing in the record on appeal to indicate that plaintiff was given an extension. However, even assuming that plaintiff met the requirements of section 1008, she did not exhaust her administrative ***891** remedies prior to filing the present civil action. Consequently we find no error by the trial court in dismissing the 10th cause of action.

For the foregoing reasons, the judgment is affirmed.

Panelli, P. J., and Brauer, J., concurred.
A petition for a rehearing was denied July, 18, 1985.

Cal.App.6.Dist.
Miller v. United Airlines, Inc.
174 Cal.App.3d 878, 220 Cal.Rptr. 684, 53 Fair Empl.Prac.Cas. (BNA) 1397

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EXHIBIT 10

Massa v. Southern California Rapid Transit Dist.
Cal.App. 2 Dist.,1996.

Court of Appeal, Second District, Division 4, California.
Jerry MASSA, Plaintiff and Appellant,
v.
SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT et al., Defendants and Respondents.
No. B083933.

March 26, 1996.

Individual who alleged that officer of rapid transit district police had used excessive force while questioning him asserted late claim against district under Tort Claims Act. After filing of late claim was accepted and claim was later denied, individual within six months of denial, but more than one year after alleged incident, brought action against officer and department. Officer moved for summary judgment, and the Superior Court of Los Angeles County, No. BC55828,Frederick J. Lower, Jr., J., granted motion. Individual appealed, and the Court of Appeal, Epstein, J., held that one-year statute of limitations applicable to lawsuit against governmental employee arising from course and scope of employment is satisfied if action is filed within six months of denial of claim, even if action is filed more than one year from date cause of action arose.

Reversed.

West Headnotes

[1] Appeal and Error 30 ⚷842(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact
30k842(1) k. In General. Most Cited Cases

Because interpretation of statutes is matter of law for courts to decide, usual rules of summary judgment on appeal do not apply where sole issue of one of statutory construction.

[2] Statutes 361 ⚷188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In General. Most Cited Cases

In ascertaining legislative intent, court looks first to language of statute, giving effect to its plain meaning.

[3] Municipal Corporations 268 ⚷742(3)

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k742 Actions
268k742(3) k. Time to Sue and Limitations. Most Cited Cases

Officers and Public Employees 283 ⚷119

283 Officers and Public Employees
283III Rights, Powers, Duties, and Liabilities
283k119 k. Actions by or Against Officers and Employees. Most Cited Cases

One-year statute of limitations applicable to claims of assault, battery and wrongful death is satisfied if lawsuit against governmental employee arising from conduct within course and scope of employment is filed within six months of time that claim filed under Tort Claims Act against governmental unit which is employer of defendant is denied, even if action is filed more than one year from date cause of action arose. West's Ann.Cal.C.C.P. § 340; West's Ann.Cal.Gov.Code § 945.6.

****165** Appeal from a judgment of the Superior Court of Los Angeles County, Frederick J. Lower, Jr., Judge. Reversed.
***1219** Charles H. Hack, Beverly Hills, for Plaintiff and Appellant.
Graves & King and Douglas N. Harty, Upland, for Defendants and Respondents.
EPSTEIN, Associate Justice.
Appellant Jerry Massa appeals from summary judgment entered in his action seeking damages for injuries related to excessive force used by respondent, Jay P. Vuninich, a police officer with the Southern California Transit Police, while questioning appellant. Officer Vuninich's motion for summary judgment was granted on the ground that appellant failed to file his complaint against him within the applicable one year statute of limitations. Appellant argues that the Tort Claims Act allows him to file his complaint within six months after his claim was denied by the governmental entity, even though the six-month period extends beyond the ordinary one-year statute of limitations. We conclude this position has merit and that the trial court erred in dismissing the lawsuit on statute of limitations grounds.

FACTUAL AND PROCEDURAL SUMMARY

On November 26, 1990, appellant was detained and questioned by respondent, Officer Vuninich. Appellant alleged that respondent used excessive force while questioning him. It is undisputed that the alleged conduct of Officer Vuninich occurred during the performance of his duties as an officer of the Southern California Rapid Transit District Police. Appellant requested that respondent's employer, the Southern California Rapid Transit District, accept a late claim against the district. The claim, which named Officer Vuninich (misspelled as "Vunich"), was presented on November 26, 1991. The employer agreed to accept the late claim, and denied it on December 3, 1991.

On May 22, 1992, a date within six months of the denial but more than one year after the alleged incident, appellant filed a lawsuit against respondents for personal injuries related to the detention. Respondent Vuninich moved for summary judgment, arguing that appellant's complaint was ***1220** barred by the one-year statute of limitations of Code of Civil Procedure section 340. The trial court granted his motion on that ground. Appellant filed a timely notice of appeal.

DISCUSSION

[1] This case presents a single issue of statutory construction. Since the interpretation of statutes is a matter of law for the courts to decide, the usual rules of summary judgment on appeal do not apply. (*Simpson v. Unemployment Ins. Comp. Appeals Bd.* (1986) 187 Cal.App.3d 342, 350, 231 Cal.Rptr. 690; *Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 111, 172 Cal.Rptr. 194, 624 P.2d 244).

Two statutes are under review. Government Code section 945.6 provides that "any suit brought against a public entity on a cause of action for which a claim is required to be presented ... must be commenced: [¶] (1) If written notice is given in accordance with Section 913, not later than six months after the date such notice is personally delivered ...." ****166**Code of Civil Procedure section 340 provides that plaintiffs must file suit within one year of an occurrence of an assault, battery or for injury to or for the death of one caused by the wrongful act or neglect of another.[FN1] The complaint in this case satisfies the former; the issue is whether it is barred by the latter. Resolution of that issue is governed by the rules for ascertaining legislative intent.

FN1. Both parties state that the claim against the District and naming Officer Vuninich was filed on November 26, 1991, the last day of the one-year statute of limitations period of section 340. (See Code Civ.Proc., § 12.) We express no opinion as to the result if the claim had been presented after that period.

[2] In ascertaining legislative intent, we look first to the language of the statute, giving effect to its plain meaning. (*KFC Western, Inc. v. Meghrig* (1994) 23 Cal.App.4th 1167, 1174, 28 Cal.Rptr.2d 676; *Kimmel v. Goland* (1990) 51 Cal.3d 202, 209, 271 Cal.Rptr. 191, 793 P.2d 524; citing *Tiernan v. Trustees of Cal. State University and Colleges* (1982) 33 Cal.3d 211, 218-219, 188 Cal.Rptr. 115, 655 P.2d 317.)

For the statutes at issue here, most of the ground already has been covered in a recent decision by Division Two of this district, in *Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 17 Cal.Rptr.2d 340. *Schmidt* holds the one-year statute of limitations of Code of Civil Procedure section 340 is satisfied if a lawsuit against a governmental entity is filed within six months of the time the claim is denied, even though it is filed more than one year from the date the cause of action arose.

***1221** The facts in *Schmidt* are almost identical to the present case, with a single exception: the lawsuit was against a governmental entity rather than an employee. The appellant was injured when the bus on which she was riding lurched, causing her to fall and break her hip. She filed a timely claim with the RTD, a public entity, which was denied. Mrs. Schmidt filed a complaint against the RTD more than one year after the cause of action arose, but within six months of the date that her claim was denied. (14 Cal.App.4th at p. 25, 17 Cal.Rptr.2d 340.) The trial court granted the RTD's motion for judgment on the pleadings because it thought the one-year statute of limitations had expired. The Court of Appeal held that compliance with Government Code sections 911.2 and 945.6 effectively extended the section 340 period. (*Id.* at pp. 25, 30, 17 Cal.Rptr.2d 340.)

In reaching this decision, the *Schmidt* court relied upon rules of statutory construction, case law and the legislative history of the Tort Claims Act. The court reasoned that "it is assumed that the Legislature has existing laws in mind at the time that it enacts a new statute. (*Estate of McDill* (1975) 14 Cal.3d 831, 837, 122 Cal.Rptr. 754, 537 P.2d 874....) We therefore expect that the Legislature was aware of Code of Civil Procedure section 340 at the time it amended section 911.2.[¶] Where possible, the goal of the courts is to achieve harmony between conflicting law (14 Cal.3d at p. 837, 122 Cal.Rptr. 754, 537 P.2d 874), and avoid an interpretation which would require that one statute be ignored. (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7, 128 Cal.Rptr. 673, 547 P.2d 449....) However, equally important are the familiar postulates that we should give effect to the more recently enacted law (*ibid.*), and that a specific statute relating to a particular subject will govern over a general one. (*Young v. Haines* (1986) 41 Cal.3d 883, 897, 226 Cal.Rptr. 547, 718 P.2d 909....) Obviously, the provisions of sections 911.2 and 945.6 are both more recent and specific than Code of Civil Procedure section 340." (14 Cal.App.4th at p. 27, 17 Cal.Rptr.2d 340.) The Tort Claims Act provides time deadlines which differ from those in the general statutes of limitation. Additionally, Code of Civil Procedure section 342 refers claimants suing an entity to the relevant provisions of the Tort Claims Act and provides that the deadlines of Government Code section 945.6 must be followed. The legislative history of section 342 strongly suggests that the time provisions of that Act govern the period within which a lawsuit must be filed. (14 Cal.App.4th at pp. 28, 30, 17 Cal.Rptr.2d 340.)

[3] The trial court in our case concluded that the reasoning of *Schmidt* does not apply ****167** to suits against governmental employees. We do not believe that distinction is tenable in light of the rationale of the case, the plain language of the statute, and the legislative purpose of providing a parallel scheme for suing government entities and their employees.

As we have discussed, Government Code section

950.6 requires that a written claim for money or damages for injury be presented to the employing ***1222** public entity as a prerequisite to suing the agency or any of its employees who are claimed to have acted within their official capacity. The statute also requires that any suit against the public employee be commenced within the time prescribed by Government Code section 945.6 for bringing an action against the public entity-i.e. within six months of the time the claim is denied by the entity. The plain meaning of this section is that a suit is timely if it is filed against a public employee within six months of the date the claim was rejected by the entity.

Government Code section 905 provides, "there shall be presented in accordance with Chapter 1 and Chapter 2 of this part all claims for money or damages against *local public entities* " (emphasis added) and Government Code section 950.2 requires that, "a cause of action against a public employee or former public employee for injury resulting from an act or omission in the scope of his employment as a public employee is barred if an action against the employing public entity for such injury is barred under Part 3 of this division or under Chapter 2 of Part 4 of this division." This statute has been interpreted to require that, prior to bringing an action against a public employee, the plaintiff must comply with Government Code section 900 et seq. (*Williams v. Townsend* (D.C.Cal.1968) 283 F.Supp. 580.)

Government Code sections 910-913.2 provide the procedures that are to be followed when filing a claim either against the governmental entity or employee. The rejection of a claim as a prerequisite to filing a suit against either a public entity or employee are both provided for under the Code.

Government Code section 950.6 provides in pertinent part: "When a written claim for money or damages for injury has been presented to the employing public entity: [¶] (a) A cause of action for such injury may not be maintained against the *public employee or former public employee...* until the claim has been rejected, ... by the public entity. [¶] (b) A suit against the public employee or former public employee for such injury must be commenced within the time prescribed by *Section 945.6 for bringing an action against the public entity.*" (Emphasis added)

Government Code section 945.4 is similar. It requires a rejected claim against an entity before filing suit. "[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required ... until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, ..."

A review of the statutory provisions governing suits against public entities and their employees demonstrates that the procedures are parallel, except ***1223** that it is not necessary to file a claim against an employee so long as a claim is filed with the employing entity, identifying the employee and the basis for respondeat superior liability. In submitting the recommendations which led to adoption of the Tort Claims Act in 1963, the California Law Revision Commission observed that "the existing personnel claims statutes are ambiguous, inconsistent and overlapping." (Recommendations Relating to Sovereign Immunity, No. 2, Claims, Actions and Judgments Against Public Entities and Public Employees (Jan.1963) 4 Cal Law Revision Com. Rep. p. 1015.) The commission recommended that actions against governmental employees concerning acts within the scope of their employment should be barred if the same action against the entity based on the same event would be barred because the requirements of the entity claims statute had not been met. (*Id.*, pp. 1016-1017.) In a leading treatise on the Act, the author interpreted this recommendation to be the Commission's recognition of the "need for a claims-presentation procedure applicable****168** to claims against public officers and employees that was parallel to the claims procedures that were prescribed as a prerequisite to tort actions against public entities." (Van Alstyne, Cal. Government Tort Liability Practice (Cont.Ed.Bar 1992) § 6.107, pp. 808-809.) The plain meaning of the relevant statutes and legislative history leads to the conclusion that the legislative intent was to maintain a consistency between governmental entities and employees.

This consistency is achieved by applying the same statute of limitations bar to suits against a government employee for conduct within the course and scope of employment as applies to suits against the employing entity on the theory of respondeat superior culpability based on the employee's negligence. It would be defeated by applying a different period of limitation.

DISPOSITION

The judgment is reversed. Appellant to have his costs on appeal.

CHARLES S. VOGEL, P.J., and RUBIN, J.[FN*], concur.

FN* Assigned by the Chairperson of the Judicial Council.

Cal.App. 2 Dist.,1996.
Massa v. Southern Cal. Rapid Transit Dist.
43 Cal.App.4th 1217, 51 Cal.Rptr.2d 164, 96 Cal. Daily Op. Serv. 2049, 96 Daily Journal D.A.R. 3431

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EXHIBIT 11

NAPA CITIZENS FOR HONEST GOVERNMENT et al., Plaintiffs and Appellants, v. NAPA COUNTY BOARD OF SUPERVISORS, Defendant and Appellant.
Cal.App.1.Dist.

NAPA CITIZENS FOR HONEST GOVERNMENT et al., Plaintiffs and Appellants,
v.
NAPA COUNTY BOARD OF SUPERVISORS, Defendant and Appellant.
No. A089095.

Court of Appeal, First District, Division 1, California.
Aug. 3, 2001.

SUMMARY

A county's board of supervisors adopted a resolution certifying a final subsequent environmental impact report (FSEIR) and adopting an updated specific plan for the development of an unincorporated area surrounding a county airport. Two citizens' groups and a city located within the county filed complaints and petitions for writs of mandate challenging the county's general plan, the updated specific plan, and the certification of the FSEIR. The trial court sustained demurrers to the causes of action challenging the general plan, ruling that they were time-barred. The trial court subsequently entered judgment granting the petition for a writ of mandate, ruling that the FSEIR was inadequate and that the updated specific plan was invalid. (Superior Court of Napa County, No. 26-04014, Richard A. Bennett, Judge.)

The Court of Appeal affirmed the judgment and the order sustaining the county's demurrer to the complaints. The court held that in adopting the resolution certifying the FSEIR and adopting the updated specific plan, the county board of supervisors did not lack the authority to delete the mitigation measures adopted as part of the original specific plan 12 years earlier. The court also held that the FSEIR adequately identified the project's significant environmental effects and the mitigation measures relating to traffic. The court further held that the FSEIR adequately discussed housing needs. The court held that the FSEIR was inadequate in failing to identify and analyze alternative sources for water and resources for treatment of wastewater. The court also held that the trial court did not err in finding that the updated specific plan was inconsistent with the goals and policies set forth in the county's general plan. The inconsistencies between the general plan and updated specific plan also required a finding that the county abused its discretion in adopting the updated specific plan. Finally, the court held that the trial court properly ruled that the causes of action to challenge the county's general plan were time-barred by Gov. Code, § 65009, subd. (c)(1). (Opinion by Stein, Acting P. J., with Strankman, J., FN* and Marchiano, J., concurring.)

FN* Retired Presiding Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES

Classified to California Digest of Official Reports

(1) Zoning and Planning § 15--General Plans--Consistency Doctrine.
A general plan serves as a constitution for all future developments within the city or county. The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements. The consistency doctrine is the principle that infuses the concept of planned growth with the force of law.

(2) Pollution and Conservation Laws § 2.3--California Environmental Quality Act--Environmental Impact Reports--Purpose--Contents

and Sufficiency.
The Legislature intended the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. The purpose of an environmental impact report (EIR) under CEQA is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment but also informed self-government. The ultimate decision of whether to approve a project is a nullity if based upon an EIR that does not provide the decision makers and the public with the information about the project that is required by CEQA. The error is prejudicial if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.

(3) Pollution and Conservation Laws § 2.3--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency--Standard of Review.
An agency's certification of an environmental impact report (EIR) is subject to judicial review, but in reviewing agency actions under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) provides that a court's inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. Thus, the reviewing court does not pass upon the correctness of the environmental conclusions in the EIR, but only upon its sufficiency as an informative document. The reviewing court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. The reviewing court's limited function is consistent with the principle that the purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not guarantee that these decisions will always be those which favor environmental considerations. The reviewing court may not substitute its judgment for that of the people and their local representatives. It can and must, however, scrupulously enforce all legislatively mandated CEQA requirements.

(4) Zoning and Planning § 15--General Plans--Consistency of Project with General Plan--Standard of Review.
A governing body's conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion. An abuse of discretion is established only if the governing body has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. On appeal, in applying the substantial evidence standard, the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision. The role of the appellate court's rule is precisely the same as the trial court's, and the lower court's findings are not conclusive on appeal.

(5) Pollution and Conservation Laws § 2.5--California Environmental Quality Act--Environmental Impact Reports--Mitigation Measures--Deletion of Original Mitigation Measures.
In adopting a resolution certifying a final subsequent environmental impact report and adopting an updated specific plan for the development of an unincorporated area surrounding a county airport, the county board of supervisors did not lack the authority to delete the mitigation measures adopted as part of the original specific plan 12 years earlier. A county's needs necessarily change over time, mistakes may need to be rectified, and the vision of a region's citizens or its governing body may evolve over time. Thus, a county must have the power to modify its land use plans as circumstances require. The Government Code recognizes this need and

permits counties to modify their general plans (Gov. Code, § 65453, subds. (a) & (b)), and specific plans (Gov. Code, § 65453, subd. (a)). Nonetheless, a governing body must state a legitimate reason for deleting an earlier adopted mitigation measure and must support that statement of reason with substantial evidence. In this case, the report concluded that the project could not go forward if it was conditioned on implementing the mitigation measures, and deleted them as having been ill-advised. This conclusion was partially based on findings that the traffic resulting from the project would be only a minor contributing factor to the region's traffic problems, and that the county had little control over improvements to the state's highways. Thus, the county stated a legitimate reason for deleting the measures, and substantial evidence supported the findings that the measures were infeasible.

[See 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 832-833; West's Key Number Digest, Zoning and Planning k. 151.]

(6) Pollution and Conservation Laws § 2.5--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency--Mitigation Measures.

An environmental impact report (EIR) need not analyze every imaginable alternative or mitigation measure; its concern is with feasible means of reducing environmental effects. Under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and its guidelines, a mitigation measure is feasible if it is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. In keeping with CEQA and the guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. While the response need not be exhaustive, it should evince good faith and a reasoned analysis. The failure to provide enough information to permit informed decisionmaking is fatal. When the informational requirements of CEQA are not complied with, an agency has failed to proceed in a manner required by law and has therefore abused its discretion.

(7) Pollution and Conservation Laws § 2.6--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency--Future Impact-- Traffic.

A final subsequent environmental impact report (FSEIR) that was drafted with regard to the development of an unincorporated area surrounding a county airport adequately identified the project's significant environmental effects with regard to traffic. The drafters explained their theories, supported them by calculations, and made no attempt to hide the fact that the original mitigation measures were being deleted. To the contrary, the drafters were careful to explain that the earlier measures had been deleted and explained in detail their calculations of the impact the project would have on traffic within the project area and on regional traffic along the highways adjacent to the project area. The FSEIR, accordingly, contained an adequate explanation of the drafters' reasoning, and of the data underlying that reasoning. Thus, it fulfilled its informational purpose as to identification of the significant effects the project would have on traffic and circulation.

(8) Pollution and Conservation Laws § 2.5--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency--Mitigation Measures--Traffic.

A final subsequent environmental impact report (FSEIR) that was drafted with regard to the development of an unincorporated area surrounding a county airport adequately identified and analyzed the mitigation measures relating to traffic. The FSEIR deleted the original mitigation measures, and the record supported the conclusion in the FSEIR that the original measures could not be accomplished in a successful manner within a reasonable period of time, and thus were infeasible. Although the FSEIR could have discussed the efficacy of imposing a mitigation fee or of using the existing mitigation fee as means of providing some funding for highway improvements, the evidence indicated that it was unreasonable to view such fees a potential solution to the region's traffic and circulation problems. In fact, the project was expected to cause only a small percentage of the projected traffic congestion, and mitigation measures must be roughly proportional to the impacts of a project (Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(4)(B)). Since the FSEIR concluded that there was no consensus within the county on how to deal with the expected congestion, the FSEIR set forth a study of traffic impacts and potential solutions. A study may be a mitigation measure if there is a definite commitment both to produce the study and to take such mitigation measures as are recommended by it. Since the county made only a limited commitment to participate in the study recommended by the FSEIR, the study could not be deemed a true mitigation measure. The fact that a proposal was mislabeled a mitigation measure, however, did not by itself invalidate the FSEIR.

(9) Pollution and Conservation Laws § 2.6--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency--Future Impact-- Housing.
A final subsequent environmental impact report (FSEIR) that was drafted with regard to the development of an unincorporated area surrounding a county airport adequately discussed housing needs, notwithstanding that the project itself called for no construction of housing units, and that the effect on housing would be felt outside the project area. An environmental impact report must discuss growth-inducing impacts even though those impacts are not themselves a part of the project under consideration, and even though the extent of the growth is difficult to calculate. However, a detailed analysis was not required, since it could not be known if the project would cause growth in any particular area, and because the project would not likely be the sole contributor to growth. The required detail depends on factors such as the nature of the project, the directness or indirectness of the contemplated impact, and the ability to forecast the actual effects the project will have on the physical environment. In this case, the FSEIR was required to identify the number and type of housing units that persons working in the project area could be anticipated to require, to identify the probable location of those units, and to consider whether the identified communities had sufficient housing units and services to accommodate the anticipated increase in population. Although the FSEIR failed to do so, an appended market and jobs/housing analysis contained an adequate discussion of the housing needs.

(10) Pollution and Conservation Laws § 2.5--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency--Mitigation Measures--Housing--Growth Outside Project Area.
A final subsequent environmental impact report (FSEIR) that was drafted with regard to the development of an unincorporated area surrounding a county airport, was not deficient for failing to discuss measures that might mitigate the impact on housing, where the project itself called for no construction of housing units, and the effect on housing would be felt outside the project area. An environmental impact report is not required to anticipate and mitigate the effects of a particular project on growth on other areas. It is enough that an FSEIR warns interested persons and governing bodies of the probability that additional housing will be needed so that the they can take steps to prepare for or address that probability. The FSEIR need not forecast the impact that the housing will have on as yet unidentified areas and propose measures to mitigate that impact. That process is best reserved until such time as a particular housing project is proposed.

(11) Pollution and Conservation Laws § 2.6--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency--Future Impact--Mitigation Measures--Treatment of Wastewater and Sources of Water.
A final subsequent environmental impact report

(FSEIR) that was drafted with regard to the development of an unincorporated area surrounding a county airport was inadequate in failing to identify and analyze alternative sources for water and resources for treatment of wastewater. The necessary agreements designed to provide service sufficient to meet the project's needs had not yet been reached, and since the project had no control over those agreements, it could not ensure that they would be reached. While the FSEIR was not required to identify and analyze all possible resources that might service the project should the anticipated resources fail to materialize, the FSEIR could not simply label the possibility that they will not materialize as speculative, and decline to address it. The county should have been informed if other sources exist, and of the environmental consequences of tapping such resources. Without either such information or a guarantee that the resources identified in the FSEIR would be available, the county was unable to make a meaningful assessment of the potentially significant environmental impacts of the project. Since the identified sources for water and treatment of wastewater were uncertain, and since the FSEIR was inadequate in failing either to identify new sources or to report that none was available, the FSEIR also was inadequate in failing to identify and analyze appropriate mitigation measures related to the alternative sources, if any.

(12) Zoning and Planning § 15--General Plans--Consistency of Project with General Plan.
A development project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. A given project need not be in perfect conformity with each and every general plan policy. To be consistent, a project must be compatible with the objectives, policies, general land uses and programs specified in the general plan. General plans ordinarily do not state specific mandates or prohibitions. Rather, they state policies, and set forth goals.

(13a, 13b) Zoning and Planning § 15--General Plans--Consistency of Specific Plan--Inconsistency Based on Failure to Mitigate Impacts of Project and to Provide Adequate Information.
The trial court did not err in finding that a county's updated specific plan for the development of an unincorporated area surrounding a county airport was inconsistent with the goals and policies set forth in the county's general plan. Where a specific plan will frustrate the general plan's goals and policies, it is inconsistent with the general plan unless it also includes definite affirmative commitments to mitigate the adverse effect or effects. In this case, the updated specific plan failed to take affirmative steps to mitigate the impact the project would have on traffic and circulation, including the failure to make an affirmative commitment to implement a traffic study. The updated specific plan also failed to take affirmative steps or make an affirmative commitment to mitigate the effect the project would have on housing and growth. Also, the final subsequent environmental impact report (FSEIR) failed to provide sufficient information as to the effects of the project on the region's water supply and the need for treatment of wastewater, and it failed to include an adequate discussion of the project's impact on steelhead trout, an endangered species. The inadequacies of the FSEIR necessarily invalidated the county's certification of the FSEIR and the adoption of the updated specific plan. The inconsistencies between the general plan and updated specific plan also required a finding that the county abused its discretion in adopting the updated specific plan.

(14a, 14b) Pollution and Conservation Laws § 2.6--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency--Future Impact--Wastewater and Sources of Water--Steelhead Trout.
A final subsequent environmental impact report (FSEIR) that was drafted with regard to the development of an unincorporated area surrounding a county airport was inadequate in failing to investigate and make findings as to the impact an updated specific plan would have on steelhead trout, an endangered species. The county was made aware that

steelhead trout were an endangered species, that at least one creek in the project area was a spawning area for the trout, and that care had to be taken to ensure that the trout were protected. Cal. Code Regs., tit. 14, § 15065, subd. (a), provides that an agency shall find that a project has a significant effect on the environment if the project has the potential to reduce the number or restrict the range of an endangered, rare, or threatened species. The comments made during the administrative proceeding, together with a letter from a city located within the county, should have alerted the county that the FSEIR needed to consider the impact of the project on steelhead trout. The issue thus was adequately raised at the administrative level. The burden is on the environmental impact report to consider and decide if a project will cause a significant effect. Therefore, once the issue of steelhead trout was identified, the burden shifted to the county to investigate the effect of the project on that species, and to take appropriate action depending on the results of that investigation.

(15) Administrative Law § 87--Judicial Review and Relief--Limitations on Availability--Exhaustion of Administrative Remedies--Purpose.
The purpose of the rule of exhaustion of administrative remedies is to provide an administrative agency with the opportunity to decide matters in its area of expertise prior to judicial review. The decisionmaking body is entitled to learn the contentions of interested parties before litigation is instituted.

(16) Zoning and Planning § 15--General Plans--Consistency of Project with General Plan--Standard of Review:Pollution and Conservation Laws § 2.9-- California Environmental Quality Act--Proceedings--Judicial Review.
The body that adopts general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. Thus, a reviewing court gives great deference to an agency's determination that its decision is consistent with its general plan. Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. A reviewing court's role is simply to decide whether the public officials considered the applicable policies and the extent to which the proposed project conforms with those policies. Nonetheless, when the informational requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) are not followed, an agency has failed to proceed in a manner required by law and has therefore abused its discretion. In addition, although the agency's factual determinations are subject to deferential review, questions of interpretation or application of the requirements of the CEQA statute are matters of law. While the reviewing court may not substitute its judgment for that of the decision makers, the court must ensure strict compliance with the procedures and mandates of the statute.

(17) Zoning and Planning § 37--Enforcement of Laws and Regulations-- Challenge to General Plan--Timeliness.
Following a county's adoption of a resolution certifying a final subsequent environmental impact report and adopting an updated specific plan for the development of an unincorporated area surrounding a county airport, the trial court properly ruled that the causes of action brought by two citizen groups and a city to challenge the county's general plan were time-barred by Gov. Code, § 65009, subd. (c)(1) (challenge to decision to adopt general or specific plan must be commenced within 90 days after legislative body's decision). The express purpose of Gov. Code, § 65009, is to provide certainty for property owners and local governments regarding decisions made pursuant to this division. Decisions made on the basis of the provisions of a general plan would provide no security if that plan became subject to change any time a specific plan was either adopted or amended. Thus, under Gov. Code, § 65009, the decision to adopt or amend a

general plan or a specific plan may be attacked no later than 90 days after that decision was made. Even if the challengers had the power to challenge the county's general plan, the adoption of the updated specific plan would not have rendered the general plan invalid. If an updated specific plan is inconsistent with the general plan, the updated specific plan is invalid, but the general plan remains unaffected.

COUNSEL
Law Office of J. William Yeates, J. William Yeates, Mary U. Akens; Law Offices of William D. Ross, William D. Ross and Barbara J. Higgins for Plaintiffs and Appellants.
Chatten-Brown and Associates, Jan Chatten-Brown and Douglas P. Carstens for Mountain Lion Foundation, Natural Resources Defense Council, Planning and Conservation League and Sierra Club as Amici Curiae on behalf of Plaintiffs and Appellants.
Miller, Starr & Regalia, Arthur F. Coon and Christian M. Carrigan for Defendant and Appellant.
McCutchen, Doyle, Brown & Enersen, Stephen L. Kostka and Laura A. Colthurst for California State Association of Counties as Amicus Curiae on behalf of Defendant and Appellant.
STEIN, Acting P. J.
On October 20, 1998, the Napa County (the County) Board of Supervisors adopted a resolution certifying a final subsequent ***352** environmental impact report (the FSEIR) and adopting an updated specific plan (the Updated Specific Plan) for the development of an unincorporated area surrounding the Napa County Airport. Two citizens groups and the City of American Canyon, a city located within the County, responded to the County's actions by filing complaints and petitions for writ of mandate challenging the County's general plan (General Plan), the Updated Specific Plan and the certification of the FSEIR. (The challengers will be referred to, collectively, as Petitioners.) The superior court sustained demurrers to the causes of action challenging the General Plan, ruling that they were time-barred. It later entered judgment granting the petition for writ of mandate, ruling that the FSEIR was inadequate and that the Updated Specific Plan was invalid.

The County has filed an appeal from the judgment. Petitioners have filed a cross-appeal from the order sustaining the demurrer to the causes of action challenging the County's General Plan.

We do not agree with every detail of the trial court's rulings, but we will find that the demurrers properly were sustained, the FSEIR was inadequate and the Updated Specific Plan was invalid. We therefore will affirm the judgment, although without completely adopting the trial court's reasoning.

Background

The Legislature has declared a policy "to protect California's land resource, to insure its preservation and use in ways which are economically and socially desirable in an attempt to improve the quality of life in California." (Gov. Code, § 65030.) To further this policy, each of the state's counties is required to adopt a comprehensive, long-term, general plan for the physical development of that county. (Gov. Code, § 65300.)The county may then, if it chooses, adopt one or more specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan. (Gov. Code, § 65450.)

In 1986, in accordance with Government Code section 65450, the County adopted a specific plan (the 1986 Specific Plan) to develop the airport industrial area (the Project or Project area). The Project area is made up of approximately 2,945 acres, including the Napa County Airport, immediately south of the City of Napa City. It is bordered by the area's main north-south transportation route, State Route 29. The area's main east-west transportation route, Highway 12, crosses State Route 29 and runs through the Project area to the Napa County Airport. In 1986, the area consisted mainly of flat grasslands, crossed by several creeks. It was used primarily for agricultural ***353** purposes such as grazing and growing forage crops. The 1986 Specific Plan contemplated developing the area to accommodate 1,923 acres of industrial development, including 1,354 acres designated business/industrial park and 569 acres designated general industrial.

The 1986 Specific Plan was a "project" within the purview of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. This meant, among other things, that the County was required to prepare and circulate an environmental impact report, or EIR, and was encouraged to hold public hearings prior to certifying the EIR and adopting the 1986 Specific Plan. (Pub. Resources Code, §§ 21065, 21080, subd. (a), 21151.) An EIR was prepared. It identified a number of adverse environmental effects that would result from the adoption of the Project, identified various mitigation measures that might alleviate some or all of those effects, and made recommendations. The County adopted several of the proposed mitigation measures, incorporating them into the 1986 Specific Plan.

The County found, however, that no feasible mitigation measures or alternatives had been proposed that would fully mitigate the adverse effects of the Project on traffic, road access, hydrology, water quality, vegetation, wildlife, land use, and visual, noise and air quality. The County nonetheless certified the EIR, finding that identified economic and social factors justified approval of the Project notwithstanding that the Project would have unmitigated adverse effects on the environment. The County thereafter approved the Project, and adopted the 1986 Specific Plan.

The County began to update the 1986 Specific Plan in 1994. As part of this process, the County caused a draft Updated Specific Plan and a draft subsequent EIR to be prepared and circulated, and again conducted hearings, reviews and related proceedings. After receiving comments and criticisms, the County caused a supplement to the draft subsequent EIR (the Supplement) to be prepared and circulated, and after receiving comments and criticisms to the Supplement, it caused an addendum to the draft subsequent EIR (the Addendum) to be prepared. At the completion of these proceedings, the County, on October 20, 1998, adopted the Updated Specific Plan after certifying the FSEIR, which was comprised of the draft subsequent EIR as modified by the Supplement and the Addendum.

As in 1986, the County found that no feasible mitigation measures or alternatives had been proposed that would fully mitigate the adverse effects of the project. Indeed, the County concluded that a number of the measures approved or adopted as part of the 1986 Specific Plan were not feasible. The ***354** County nonetheless certified the FSEIR and adopted the Updated Specific Plan, deleting the mitigation measures adopted in 1986 but found infeasible in 1998. The County found that with the adoption of such mitigation measures as were feasible, the specified impacts would be reduced to a "less than significant" level, and/or that additional mitigation measures were infeasible and the benefits of the Updated Specific Plan sufficiently overrode and outweighed the significant impacts it would have on the environment.

On November, 19, 1998, Napa Citizens for Honest Government and North Bay Citizens for Responsible Transportation filed a complaint and petition for writ of mandate, challenging the FSEIR and Updated Specific Plan. American Canyon was permitted to intervene in the proceedings, and filed its own complaint and petition for writ of mandate challenging the FSEIR and Updated Specific Plan.

The County successfully demurred to both complaints and petitions insofar as they attacked the County's General Plan, on the basis that such an attack was time-barred. The court, however, granted the petition for writ of mandate, and entered judgment in favor of Petitioners on their remaining claims, finding (1) that the Updated Specific Plan was inconsistent with the General Plan's circulation element; (2) that the FSEIR failed adequately to analyze identified traffic problems and failed to provide adequate mitigation measures for identified traffic and circulation impacts; (3) that the Updated Specific Plan was inconsistent with the goals and policies of the General Plan's housing element; (4) that the FSEIR failed adequately to evaluate and mitigate the Updated Specific Plan's impact on housing; (5) that the FSEIR failed adequately to analyze and mitigate identified significant impacts as to wastewater treatment and water distribution; and (6) that the FSEIR failed to investigate and make findings as to the impact the Updated Specific Plan would have on steelhead trout.

The Appeal

Introduction

Two interrelated bodies of law govern the County's actions. The first is the state's planning and zoning laws, Government Code section 65000 et seq., which, as mentioned above, are designed to protect California's land resource, mandate that a county such as Napa develop and adopt a general plan, and authorize counties to adopt specific plans.

The planning and zoning laws require each general plan to incorporate certain elements including, as relevant here, a land use element, a circulation ***355** element (which must be coordinated with the land use element), a housing element, and a conservation element. (Gov. Code, §§ 65302, subds. (b), (c) & (d).) (1) " 'The general plan has been aptly described as the " constitution for all future developments" within the city or county.... "[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements. " ...' [Citations.] 'The consistency doctrine has been described as "the linchpin of California's land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law. " ...' [Citation.]" (*Families Unafraid to Uphold Rural etc. Countyv. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336, [74 Cal.Rptr.2d 1]) (hereafter *FUTURE*) quoting from *Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994 [21 Cal.Rptr.2d 803].)

The Updated Specific Plan, therefore, is valid only to the extent that it is consistent with the County's General Plan; i.e., to the extent that it is compatible with the General Plan's objectives, policies, general land uses and programs.

The second body of law at issue is CEQA, a comprehensive scheme designed to provide long-term protection to the environment. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112 [65 Cal.Rptr.2d 580, 939 P.2d 1280].) The Public Resources Code codifies CEQA at section 21000 et seq. Its provisions are supplemented by the CEQA Guidelines, set forth in the California Code of Regulations, title 14, section 15000 et seq. (CEQA Guidelines). FN1

FN1 It has not been decided if the CEQA Guidelines are regulatory mandates or merely aids to interpreting CEQA; nonetheless, "[a]t a minimum, ... courts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2 [253 Cal.Rptr. 426, 764 P.2d 278].)

(2) " 'The foremost principle under CEQA is that the Legislature intended the act "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." ' [Citations.] [¶] The EIR has been aptly described as the 'heart of CEQA.' [Citations.] Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' [Citation.]" (*Citizens of Goleta Valley v. Board of*

Supervisors (1990) 52 Cal.3d 553, 563-564 [276 Cal.Rptr. 410, 801 P.2d 1161], fn. omitted.) " '[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that ***356** does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.' [Citation.] The error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.' [Citation.]" (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722 [32 Cal.Rptr.2d 704].)

The validity of the FSEIR, therefore, depends in large part upon whether it provides the information necessary for the County and the public to understand the nature and environmental consequences of the Project. There is no requirement that the FSEIR itself be consistent with the County's General Plan, but it is required to identify any inconsistencies between the Project and the General Plan. (CEQA Guidelines, § 15125, subd. (d).)

Finally, although in regulating EIR's, CEQA describes the information that must be provided before an agency can approve a project, it also, to a limited degree, restricts the power of the agency to approve a project. Public Resources Code section 21002.1, subdivision (b), thus prohibits an agency from approving a project without requiring the implementation of any feasible mitigation measures, providing: "Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Public Resources Code section 21002, and CEQA Guidelines section 15093, subdivisions (a) and (b), permit an agency to approve a project even though it will have significant impacts on the environment that cannot be fully mitigated, but only if the agency finds that specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects it will have. In the present case, the FSEIR reported that the Project would cause some adverse effects that could not be feasibly mitigated. The County nonetheless adopted the Updated Specific Plan, finding that the significant effects that could not be mitigated would be outweighed by the Project's benefits. Petitioners do not claim that this finding was an abuse of discretion; their complaints are with the process leading up to that finding.

Standard of Review

(3) An agency's certification of an EIR is subject to judicial review, but "[i]n reviewing agency actions under CEQA, Public Resources Code section 21168.5 provides that a court's inquiry 'shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the ***357** agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' Thus, the reviewing court "'does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document. " ' [Citations.] We may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. 'Our limited function is consistent with the principle that "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations." ' [Citations.] We may not, in sum, substitute our judgment for that of the people and their local representatives. We can and must, however, scrupulously enforce all legislatively mandated CEQA requirements." (*Citizens of Goleta Valley v. Board of Supervisors, supra,*52 Cal.3d at p. 564.)

(4) Similarly, a governing body's conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of

abuse of discretion. "An abuse of discretion is established only if the [governing body] has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence." (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717 [29 Cal.Rptr.2d 182].)

On appeal, "[i]n applying the substantial evidence standard, 'the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision.' " (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,*47 Cal.3d at p. 393.)The role of the appellate court's rule is precisely the same as the trial court's, and the lower court's findings are not conclusive on appeal. (*Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1076 [230 Cal.Rptr. 413].)

Deletion of Mitigation Measures Adopted in 1986

(5) A preliminary question is presented by the trial court's determination that the County lacked the authority to delete the mitigation measures adopted as part of the 1986 Specific Plan. Logic dictates against a conclusion that a mitigation measure once adopted may not be deleted. A county's needs necessarily change over time in light of such matters as the development of surrounding communities, state and federal action, and/or natural disasters. It follows that a county must have the power to modify its land use ***358** plans as circumstances require. The Government Code recognizes this need and permits counties to modify their general plans if they deem the amendment to be in the public interest, except that (with exceptions not present here) any mandatory element of a general plan may not be modified more frequently than four times in any calendar year. (Gov. Code, § 65358, subds. (a) & (b).) A specific plan may be amended in the same manner as a general plan, except that a specific plan may be amended as often as deemed necessary by the legislative body. (Gov. Code, § 65453, subd. (a).) Of course, the specific plan, as amended, still must be consistent with the general plan (Gov. Code, § 65454), and any EIR submitted in connection with the modified plan still must be adequate, but there is no statutory authority for the proposition that an amendment may not include the deletion of an earlier adopted mitigation measure.

The claim that once a mitigation measure is adopted it never can be deleted is inconsistent with the legislative recognition of the need to modify land use plans as circumstances change. It also is true that mistakes can be made and must be rectified, and that the vision of a region's citizens or its governing body may evolve over time. In light of all these considerations, we conclude that there are times when mitigation measures, once adopted, can be deleted.

Petitioners cite *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351 [7 Cal.Rptr.2d 307] as providing support for the argument that a mitigation measure, once adopted, cannot be deleted. The scope of the project at issue there was broad and somewhat nebulous, with the result that the county could not formulate mitigation measures with any precision. It was held that certain mitigation measures, although imprecise, were sufficient because "a firm commitment has been made to future mitigation of significant impacts. Where, as here, devising more specific mitigation measures early in the planning process is impractical, ' "the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval...." ' " (*Id.* at p. 377.) *Rio Vista,* accordingly, establishes that a firm commitment to devise an effective mitigation measure can itself be a mitigation measure. It does not, however, establish that a particular mitigation measure, once adopted, is a commitment that may never be modified or deleted.

Petitioners also cite *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252 [100 Cal.Rptr.2d 301], where the court recognized that CEQA requires an agency, such as the County here, to take steps to ensure that any mitigation measures "will actually be implemented as a condition of development, and not merely adopted and then ***359** neglected or disregarded." (*Id.* at p. 1261, italics omitted.) Although the court found that an agency cannot simply ignore mitigation measures required by an EIR, nothing in that case compels the conclusion that a mitigation measure, once adopted, is binding for all time.

In short, we find nothing in established law or in logic to support the conclusion that a mitigation measure, once adopted, never can be deleted. Nonetheless, when an earlier adopted mitigation measure has been deleted, the deference provided to governing bodies with respect to land use planning decisions must be tempered by the presumption that the governing body adopted the mitigation measure in the first place only after due investigation and consideration. We therefore hold that a governing body must state a legitimate reason for deleting an earlier adopted mitigation measure, and must support that statement of reason with substantial evidence. If no legitimate reason for the deletion has been stated, or if the evidence does not support the governing body's finding, the land use plan, as modified by the deletion or deletions, is invalid and cannot be enforced.

Assuming a valid reason for the deletion is stated, and the evidence supports the governing body's finding that the stated reason exists, the land use plan, as modified, and the supporting EIR, should be subjected to the same scrutiny as would be given any land use plan and supporting EIR. The fact that a mitigation measure had been adopted in an earlier plan, but has been deleted, will be relevant to the question of the adequacy of the modified EIR, because it identifies a mitigation measure that the modified EIR then must address. The modified EIR also must address the decision to delete a mitigation measure. In other words, the measure cannot be deleted without a showing that it is infeasible. In addition, the deletion of an earlier adopted measure should be considered in reviewing any conclusion that the benefits of a project outweigh its unmitigated impact on the environment.

In the present case, the EIR discussed the 1986 mitigation measures, and concluded, in essence, that they were infeasible. The County concluded that the Project could not go forward if it was conditioned on implementing the 1986 mitigation measures, and deleted them as having been ill-advised. This conclusion was based on findings that the traffic resulting from Project-related development would be only a minor contributing factor to the region's traffic problems, that the County lacked the funds to implement the measures recognized in 1986 and that the County had little control over improvements to the state's highways, which improvements fall under the authority of the state itself, through the California Department of Transportation (Caltrans). The County, accordingly, stated a legitimate reason for ***360** deleting the 1986 measures. As will be discussed further, below, substantial evidence supports the EIR's findings that the 1986 measures were infeasible, and the conclusion of the County that the Project could not go forward unless those measures were not carried into the Updated Specific Plan.

Adequacy of the FSEIR's Identification of Significant Effects and Analysis of Mitigation Measures

In order to fulfill its purpose as an informational document, an EIR is required, among other things, to identify the "significant effects" that a proposed project will have on the environment. (Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126, subd. (a).) A " '[s]ignificant ...' effect means a substantial, or potentially substantial, adverse change in the environment." (Pub. Resources Code, § 21068.)Whether a project will have a significant effect is a matter of judgment, and it is recognized that an "ironclad definition of significant effect is not always possible." (CEQA Guidelines, § 15064, subd. (b).)

Once a significant effect has been identified, the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified. (Pub. Resources

Code, § 21100, subd. (b)(3); CEQA Guidelines, § 15126, subd. (e).) Mitigation measures must be feasible and enforceable. (CEQA Guidelines, § 15126.4, subd. (a)(1), (2).) " 'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code, § 21061.1.)Any mitigation measure must be " 'roughly proportional' to the impacts of the project." (CEQA Guidelines, § 15126.4, subd. (a)(4)(B).) (6) "[A]n EIR need not analyze ' " 'every *imaginable* alternative or mitigation measure; its concern is with *feasible* means of reducing environmental effects.' " ' [Citation.] Under the CEQA statute and guidelines a mitigation measure is 'feasible' if it is 'capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.' [Citations.] [¶] In keeping with the statute and guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. [Citations.] While the response need not be exhaustive, it should evince good faith and a reasoned analysis. [Citations.]" (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029 [68 Cal.Rptr.2d 367].)

In addition, as noted above, while there is no requirement that an EIR itself be consistent with the relevant general plan, it must identify and ***361** discuss any inconsistencies between a proposed project and the governing general plan. (CEQA Guidelines, § 15125, subd. (d).)

The failure to provide enough information to permit informed decisionmaking is fatal. "When the informational requirements of CEQA are not complied with, an agency has failed to proceed in 'a manner required by law' and has therefore abused its discretion. [Citations.]" (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118 [104 Cal.Rptr.2d 326].)

A. *Traffic*

1. *Identification of Significant Effects*

(7) Traffic congestion is described by "Levels of Service," or "LOS." LOS A represents a high level of service. LOS D represents a problematic level of service. The County's Congestion Management Agency (CMA) permits levels of service as low as LOS E, notwithstanding that LOS E represents delays indicating poor progression and long cycle lengths. LOS F represents any service level below LOS E. In other words, once the level of service has deteriorated to F it can deteriorate further, but the service level will continue to be described as LOS F.

The FSEIR reports that traffic along the region's highways will increase with or without the Project. It ultimately determined that traffic generated by the Project alone would have a significant effect on certain intersections, but that determination evolved in light of public comments and criticisms. At first-and before it was decided to delete the 1986 traffic mitigation measures-the drafters calculated the levels of service that would result if the Specific Plan went forward including the 1986 mitigation measures, such as widening portions of the state highways and creating means of bypassing key intersections. The drafters contrasted these projected levels of service with those that would occur if the Project was not developed and if none of the mitigation measures was adopted. The drafters found that traffic would be less congested if development went forward and the mitigation measures were adopted, than it would be if development did not go forward and the mitigation measures were not adopted, and concluded that "the project overall is deemed not to have significant adverse impacts upon traffic and circulation."

The first draft became obsolete when it was decided to delete the 1986 mitigation measures. The drafters then took the position that the Project's effect on traffic congestion and circulation would not be significant if future ***362** congestion would cause an intersection to deteriorate to below acceptable levels whether or not the development went forward. [FN2] Thus, if an intersection would deteriorate to LOS F even without the Project, the fact that the Project would cause it to deteriorate even further was not deemed a significant effect. The only exception recognized by the drafters resulted if it could be concluded that the Project alone would cause an intersection's level of service to deteriorate to below an acceptable level. Under such circumstances, the drafters calculated the amount of traffic that would be generated by the development by the year 2015. That figure was added to existing conditions. In light of these calculations, the drafters found that traffic generated by the Project alone would cause only one intersection to deteriorate to an unacceptable level, and thus concluded that the Project would have a significant effect only on that intersection.

> FN2 The drafters' approach is authorized by CEQA Guidelines, section 15130, subdivision (a)(4): "An EIR may determine that a project's contribution to a significant cumulative impact is de minimus and thus is not significant. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented."

This approach was criticized for underrating the effect the Project would have on traffic congestion by emphasizing the fact that traffic congestion would increase whether or not the Project went forward. In addition, it was pointed out that this approach failed to analyze the actual effect of the Project on any intersection that would deteriorate to LOS F irrespective of the Project's impact on traffic.

The drafters responded by taking a third approach. In brief, the drafters found that development of the Project area would have a significant effect on traffic by the year 2015 if traffic generated by the Project alone would cause an intersection to deteriorate to an unacceptable level. They also found, however, that the Project would have a significant effect on other intersections where the traffic generated by the Project increased the "computed volume/capacity ratio by more than 10%" [FN3] and the intersection would deteriorate to an unacceptable level irrespective of Project-generated traffic. The Addendum then concluded that the Project would have a significant effect on traffic congestion at three intersections.

> FN3 The "volume/capacity ratio" measures the ability of a roadway to handle the volume of traffic. If the amount of traffic on a roadway is equal to its capacity, the ratio will be 1.00 That figure is reduced as the ability of a roadway to handle the volume of traffic passing on it is reduced. A volume/capacity ratio between 0.80 and 0.89, for example indicates service at LOS D.

Although the methodology adopted by the drafters is difficult to follow, and the fact that their approach evolved causes additional confusion, the ***363** drafters did explain their theories, supported them by calculations and made no attempt to hide the fact that the 1986 mitigation measures were being deleted. To the contrary, the drafters were careful to explain that the earlier measures had been deleted, and explained in detail their calculations of the impact the Project would have on traffic within the Project area and on regional traffic along the highways adjacent to the Project area. The FSEIR, accordingly, contained an adequate explanation of the drafters' reasoning, and of the data underlying that reasoning. We conclude that it fulfilled its informational purpose as to identification of the significant effects the Project will have on traffic and circulation.

2. *Identification and Analysis of Mitigation Meas-*

ures

(8) As discussed above, the FSEIR determined that traffic generated by the Project would have a significant effect on three key intersections. The FSEIR deleted the mitigation measures adopted in 1986, reciting that they were considered but rejected as infeasible in part because of a lack of funding, in part because they would require right-of-way takings from the adjacent properties and, as to one intersection, because of concerns expressed about the visual impact of the proposed improvement.

Petitioners do not complain about the FSEIR's findings that the 1986 mitigation measures would require significant takings, or that they would have a negative visual impact on one intersection. They note, however, that the County has raised slightly over $2 million dollars through an "Airport Industrial Area Mitigation Fee," FN4 and suggest that the FSEIR erroneously concluded that the County cannot fund the 1986 mitigation measures. Fee-based infrastructure can be an adequate mitigation measure under CEQA (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra,* 87 Cal.App.4th at p. 140), and can be particularly useful where, as here, traffic congestion results from cumulative conditions, and not solely from the development of a single project. (*Ibid.*) It therefore is somewhat surprising that the FSEIR contains no discussion of the Airport Industrial ***364** Area Mitigation Fee, and only a very limited discussion of the possibility of using that or other fees as a means of mitigating the Project's future effect on traffic.

FN4 We take judicial notice of Napa County Board of Supervisors Resolutions Nos. 90-152 and 98-117, describing the mitigation fee. The County adopted the mitigation fee in 1990, "to provide for the orderly development of the area around the Napa County Airport and to provide sufficient road improvements to accommodate the traffic which will be generated by the new development." As of February 28, 2000, $2,000,389.71 had been raised, including interest. These funds are earmarked for improvements to the Project's internal roadways at such time as the development required them to be constructed. It also is to be used to pay for the area's proportionate share of future improvements to two state highway intersections. Other improvements discussed in the 1986 EIR were not included in the fee program either because it was concluded that they were not needed, or because it was concluded that the benefit to the public outweighed the associated responsibility of the airport area developers.

Petitioners, however, do not contend that the FSEIR should have included a discussion of a traffic mitigation fee as a potential mitigation measure. They argue that the money the County has raised, or reasonably can be expected to raise, by means of the Airport Industrial Area Mitigation Fee, will be sufficient to fund the needed roadway improvements. The cost of the highway improvements, however, is far greater than $2 million; indeed, the County estimates that the improvements will cost $70 million. In addition, because the Project will cause only a small percentage of the projected traffic congestion, the County cannot insist that developers within the Project area shoulder the bulk of the expense for the needed highway improvements as a means of alleviating that congestion. Mitigation measures must be roughly proportional to the impacts of a project. (CEQA Guidelines, § 15126.4, subd. (a)(4)(B).) Although the existing mitigation fee appears to be a reasonable attempt to have developers pay their proportionate share of the cost of needed highway improvements, and the continued use of such fees undoubtedly would be useful, it cannot reasonably be argued that the funds that the County already has raised or that it reasonably can expect to raise in the future, will be enough to mitigate the effect on traffic that will result from cumulative conditions. FN5

FN5 CEQA Guidelines section 15130 requires a discussion of cumulative impacts on the environment when a project's incremental effect is cumulatively considerable, and subdivision (a)(3) of that guideline provides that a project's contribution to a significant cumulative impact may be rendered less than "cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact." The FSEIR, therefore, could have considered if the Project's impact on traffic and circulation could be reduced to "less than cumulatively considerable," by the adoption of a fee-based infrastructure program.

In addition, the record discloses that a number of entities, most particularly the City of Napa, criticized the drafters' first attempt to determine significant impacts (which still assumed that the 1986 mitigation measures would be implemented) because local funding was inadequate to cover the costs of those measures, Caltrans's money was committed to other projects, and there simply was no reason to assume that funding was or would be available. The record therefore fully supports the conclusion that the mitigation fee will not, cannot, and should not pay for the roadway improvements needed to obtain acceptable levels of service along the highways adjacent to the Project area.

For similar reasons it is unpersuasive that the record contains evidence that other localities are funding state highway improvements through local ***365** tax measures. FN6 Petitioners have made no showing that the County has the capability to raise taxes for purposes of highway improvements.

FN6 Petitioners cite to a memorandum from the County's Department of Public Works, asserting that it provides evidence that other localities are funding state highway improvements through local tax measures. In fact, the memorandum points out the difficulties trying to solve highway congestion by means of locally financed improvements, particularly when the congestion is the result of regional, rather than local, traffic patterns. The memorandum suggests that alternative routes for access be developed for those times when the state highways are congested. It recognizes that "Most of the work being done today on the inner Bay Area highways is being funded by locally approved sales tax measures. If Caltrans is not forthcoming with an appropriate solution to funding the capacity demands of their highway system in the future, the County may also need to consider similar alternative funding mechanisms to solve congestion in a more timely way."

We find that the record supports the FSEIR's conclusion that the 1986 mitigation measures could not be accomplished in a successful manner within a reasonable period of time, and thus were infeasible.

The FSEIR declined to analyze other possible improvements to the state highways as mitigation measures because, although they could reduce congestion, they would not reduce congestion to an acceptable level, and "they would not really solve the problem facing the corridor as a whole; and it is thus not possible to say that they are projects that are worth pursuing, even as interim measures." These findings also are supported by the record.

After rejecting all proposed highway improvements, the FSEIR recited: "The greater global problem is that there is currently no consensus within the County on how to deal with expected congestion [along the major County corridor]. Without an overall concept for the corridor, it is difficult, and, in the view of the authors, unwise to propose stand-alone mitigation measures. This is largely because traffic from [the Project] is an important but still minority portion of the traffic growth expected within the corridor in the next 20 years. The overall growth in traffic dominates the future demand for improved traffic service, and any improvements due to the [Project] must fit within a logical framework of response to future growth. [¶] In the view of the authors of this document, a better approach would be to recognize that Napa County faces significant problems throughout the length of this corridor.... We believe that a better approach than attempting to assign responsibility via the standard type of impact analysis discussed above would be for the County to initiate a corridor study to develop acceptable solutions and to develop a funding plan."

The FSEIR, accordingly, set forth a single mitigation measure, reciting: "A corridor-wide study of traffic impacts and potential solutions, including a ***366** review of potential funding sources and potential legislative remedies to the impacts of non-Napa-County traffic growth, should be initiated by the County with the support of all jurisdictions neighboring the Airport Specific Plan Area. The study should cover SR 29 from the Napa/Solano County border to the SR 12/29/121 intersection and all of SR 12 from the Solano County Line to the Sonoma County Line. Development projects within the Napa Airport Specific Plan should be assessed a fair-share fee to be contributed to the cost of this study. Depending on the eventual results of the study, development within the airport may also be assessed fees for fair-share costs of improving the roadway system itself. The proposal for a study of the corridor is not intended as a replacement for fair-share contributions to eventual physical mitigation measures."

A study, such as that proposed by the County, may be a mitigation measure if there is a definite commitment both to produce the study and to take such mitigation measures as are recommended by it. (See *Federation of Hillside & Canyon Associations v. City of Los Angeles, supra,*83 Cal.App.4th at pp. 1261-1262; *Rio Vista Farm Bureau Center v. County of Solano, supra,*5 Cal.App.4th 351, 377; and *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1026-1030 [280 Cal.Rptr. 478].) As will be discussed further in connection with the issue of consistency between the Updated Specific Plan and the County's General Plan, the County has made only a limited commitment to participate in the study recommended by the FSEIR. The study, accordingly, cannot be deemed a true mitigation measure. That a proposal was mislabeled a mitigation measure, however, does not by itself invalidate the FSEIR.

Petitioners make no claim that there were other measures for mitigating the impact the Project would have on traffic that should have been analyzed or should have been adopted as feasible. FN7

FN7 Petitioners, however, did complain that the FSEIR does not indicate how or when the proportional fair share is to be computed, if ever. They do not renew this complaint in their appellate briefs, it is not addressed by the County and it will not be addressed here other than to mention that such a computation reasonably might be a part of a discussion of fee-based mitigation measures.

We conclude that the FSEIR adequately identifies the Project's significant effects on traffic. It could have discussed the efficacy of imposing a mitigation fee or of using the existing mitigation fee as means of providing some funding for highway improvements, but the available evidence indicates that it would be unreasonable to view such fees as a potential solution to the region's traffic congestion and circulation problems. In short, the FSEIR adequately identified and analyzed mitigation measures, and adequately stated its reasons for rejecting the mitigation measures adopted in 1986. ***367**

B. *Housing*

1. *Identification of Significant Effects*

CEQA Guidelines section 15126, subdivision (d), requires an EIR to discuss the "Growth-Inducing

Impact of the Proposed Project." Guidelines section 15126.2, subdivision (d), elaborates: "... Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.... Increases in population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment."

(9) The Updated Specific Plan does not call for the construction of any housing in the Project area, and its proximity to the airport renders it unsuitable for housing. The County's position was and is that because there is no provision for housing units within the Specific Plan area, the proposed development has no direct impact on housing, and thus no significant effect on the environment requiring discussion in the FSEIR. Petitioners' position is that because the Project will create jobs, and the creation of jobs will bring people into the area, the FSEIR was required to analyze the resulting housing needs. We will find that the FSEIR was indeed required to discuss such housing needs as reasonably might be generated by the Project, but not in great detail. We also will find that the FSEIR, including an attached "Market and Jobs/Housing Analysis," contains an adequate discussion of these housing needs.

In arguing that the Project will have no significant effect on housing, the County relies, in part, on CEQA Guidelines section 15131. Subdivision (a) of CEQA Guidelines section 15131 recognizes that a project may have economic and social effects that do not themselves cause a physical change in the environment, or act only indirectly to cause a physical change in the environment. It recognizes that CEQA applies only if a project causes a physical change, and accordingly provides that the EIR need not include a discussion of economic or social effects that do not cause a physical change. If the anticipated economic or social effects will create a chain of cause and effect that will result in a change in the environment, the intermediate economic or social changes need not be analyzed in any detail; "[t]he focus ***368** of the analysis shall be on the physical changes." (*Ibid.*) The County argues that because the Project calls for no construction of housing units, the Project's impact on housing is merely an intermediate step on the chain of cause and effect, and therefore need not be discussed in the FSEIR.

CEQA Guidelines section 15131, does not, however, preclude the necessity for EIR review of a project simply because the project itself does not include action that will have a significant effect on the environment. It distinguishes between a project's effects on the social or economic environment and its effects on the physical environment, providing that EIR review is not required absent some resulting effect on the physical environment. Thus, for example, a "social" impact, such as overcrowding in a classroom is not a "significant effect" requiring analysis unless the overcrowding will be so great as to have an effect on the physical environment by requiring the construction of additional classrooms. (*Goleta Union School Dist. v. Regents of University of California* (1995) 37 Cal.App.4th 1025, 1032 [44 Cal.Rptr.2d 110].)

It also is settled that the EIR must discuss growth-inducing impacts even though those impacts are not themselves a part of the project under consideration, and even though the extent of the growth is difficult to calculate. The case law supports this distinction. The court in *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325 [232 Cal.Rptr. 507] found that a project required an EIR notwithstanding that the project itself involved only the construction of a road and sewer project which did not in and of themselves have a significant effect on the environment. The court recognized that the sole reason for the construction was to provide a catalyst for further development in the immediate area. It held that because construction of the project could not easily be undone, and because achievement of its purpose would almost certainly have significant environmental impacts, the project should not go forward until such impacts were evaluated in the manner prescribed by CEQA. (*Id.* at pp. 1337-1338.)

In *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144 [39 Cal.Rptr.2d 54], the court considered a proposed construction of a country club and golf course and attendant facilities. It was contended there that an EIR was not required because the growth-inducing impacts of the proposed project were too remote or speculative, and EIR's would be prepared in connection with any application for a housing development. The court responded, "The fact that the exact extent and location of such growth cannot now be determined does not excuse the County from preparation of an EIR.... [R]eview of the likely environmental effects of ***369** the proposed country club cannot be postponed until such effects have already manifested themselves through requests for amendment of the general plan and applications for approval of housing developments." (*Id.* at pp. 158-159, fn. omitted.)

It follows that an agency cannot avoid the EIR process simply because a project does not itself call for the construction of housing or other facilities that will be needed to support the growth contemplated by the project. It does not follow, however, that an EIR is required to make a detailed analysis of the impacts of a project on housing and growth. Nothing in the Guidelines, or in the cases, requires more than a general analysis of projected growth. The detail required in any particular case necessarily depends on a multitude of factors, including, but not limited to, the nature of the project, the directness or indirectness of the contemplated impact and the ability to forecast the actual effects the project will have on the physical environment. In addition, it is relevant, although by no means determinative, that future effects will themselves require analysis under CEQA.

We also do not believe that EIR review can be avoided simply because the project's effect on growth and housing will be felt outside of the project area. Indeed, the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area. That the effects will be felt outside of the project area, however, is one of the factors that determines the amount of detail required in any discussion. Less detail, for example, would be required where those effects are more indirect than effects felt within the project area, or where it is be difficult to predict them with any accuracy.

The issue in *City of Antioch* and *Stanislaus Audubon Society* was whether it was necessary to prepare an EIR at all in connection with the contemplated projects. Those cases, however, also illustrate situations requiring more detail in the EIR than we believe is required in the present case. Each case involved a project that was simply the first step in the development of a particular area. To permit them to go forward without analyzing the effect of the ultimate development as a whole, therefore, would result in a "piecemeal review in which 'environmental considerations ... become submerged by chopping a large project into many little ones-each with a minimal potential impact on the environment-which cumulatively may have disastrous consequences.' [Citations.]" (*City of Antioch v. City Council, supra,*187 Cal.App.3d at p. 1333.)Here, in contrast, the Project contemplates not just the first step of the development of the Project area, but the area's full ***370** development, and the FSEIR contains an analysis of the full extent of the contemplated development of the Project area. In addition, although the Project-induced growth inevitably will have an effect on the physical environment, unlike the situations in *City of Antioch,* and *Stanislaus Audubon Society,* this effect will be diffused over a large, undefined area. It also is true that there are a greater number of variables in the present case than existed in *City of Antioch,Stanislaus Audubon Society*, and similar cases, rendering it even more difficult to predict the location of anticipated housing with any accuracy.

Nonetheless, in order to fulfill its purpose as an informational document, the FSEIR should, at a minimum, identify the number and type of housing units that persons working within the Project area can be anticipated to require, and identify the probable location of those units. The FSEIR also should consider whether the identified communities have sufficient housing units and sufficient services to accommodate the anticipated increase in population. If it is concluded that the communities lack sufficient units and/or services, the FSEIR should identify that fact and explain that action will need to be taken to provide those units or services, or both. Because it cannot be known if the Project will cause growth in any particular area, and because the Project most likely will not be the sole contributor to growth in any particular area, it is not, however, reasonable to require the FSEIR to undertake a detailed analysis of the results of such growth.

With this in mind, we turn to the FSEIR's actual discussion of housing impacts. The FSEIR found that the Project would create a need and opportunity for employment, concluding that it would result in a need for additional housing units at locations outside of the Project area. It reasoned, however, that it was impossible to discuss the environmental effects such units would have because "the nature and extent of future, indirect development is not known at this time." The FSEIR therefore simply declined to consider the possible effects the Project might have on housing in surrounding communities. This discussion, in and of itself, is inadequate.

CEQA Guidelines section 15131, subdivision (c), however, provides: "Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project." In the present case, the Market ***371** and Jobs/Housing Analysis is appended to the Updated Specific Plan. This plan seems to make exactly the projections that the FSEIR declares cannot be made, detailing the types of businesses that can be expected to locate within the Project area, the rate at which acreage within the area can be expected to be "absorbed" into each type of projected land use and the number of employees that each type of business can be expected to add. It concludes that by the year 2015, an additional 9,881 employees will be added to area, requiring construction of an additional 5,457 housing units. It projects the number of units required by income ("very low," "low," "moderate" and "above moderate"), and it explores the possibility of locating the majority of the units in the City of Napa and/or in American Canyon.

We find that the FSEIR, including the Market and Jobs/Housing Analysis, adequately fulfills the FSEIR's informational purpose, and that the FSEIR, accordingly, contains an adequate discussion of housing.

2. *Identification and Analysis of Mitigation Measures*

(10) As the FSEIR concluded that the Project would not have any significant effect on housing, it also did not discuss any mitigation measures directed at the effect the Project would have on housing. As discussed above, we disagree with the first conclusion, but find that the FSEIR, together with the Market and Jobs/Housing Analysis, provides an adequate discussion of the impact the Project can be expected to have on growth and housing in outlying

areas. The question now is whether the FSEIR is deficient in failing to discuss measures that might mitigate that impact.

Neither CEQA itself, nor the cases that have interpreted it, require an EIR to anticipate and mitigate the effects of a particular project on growth on other areas. In circumstances such as these, we think that it is enough that the FSEIR warns interested persons and governing bodies of the probability that additional housing will be needed so that the they can take steps to prepare for or address that probability. The FSEIR need not forecast the impact that the housing will have on as yet unidentified areas and propose measures to mitigate that impact. That process is best reserved until such time as a particular housing project is proposed.

C. *Treatment of Wastewater and Sources of Water*

1. *Identification of Significant Effects*

(11) The FSEIR provides a detailed analysis of the amount of wastewater that will be generated by users within the Project area, and the amount of ***372** water that will be consumed by those users. FN8 It reports that, for the most part, main pipelines and related infrastructure for both wastewater and water are in place. It assumes that wastewater will be treated, as it is now, by the Soscol Treatment Plant. It reports that the Soscol Treatment Plant is close to capacity, and will not be able to treat additional wastewater generated by the Project. The FSEIR further reports, however, that American Canyon is expected to enter into an agreement with the City of Vallejo that should allow American Canyon to send its wastewater to Vallejo for treatment, rather than to the Soscol Treatment Plant, which then will have the capacity to treat wastewater from the Project area. It also reports that there are plans to expand the Soscol Treatment Plant to provide capacity for all wastewater generated within the Napa Sanitation District (NSD) service area through the year 2020, and that funds are available for that expansion. The FSEIR points out, however, that "[w]hile new facilities are being planned by the NSD and financing methods are available, there would be an interim period prior to the completion of improvements in which the biological treatment capacity of the existing facility may be inadequate, resulting in a significant impact upon the adequacy of wastewater service."

> FN8 The FSEIR's analysis does not extend to the residential needs for water and treatment of wastewater tied to any housing units that may be constructed in other areas as a result of the Project. As discussed, *ante*, such an analysis is best left to the time when housing is proposed.

The FSEIR does not discuss the possibility that it might become necessary to treat wastewater from the Project at some facility other than the Soscol Treatment Plant, and therefore does not address the impacts of any alternative means of treatment.

As to water use, the FSEIR assumes that water to the Project area will be supplied in the future, as it is supplied now, by American Canyon. American Canyon receives water from the State Water Project via the North Bay Aqueduct. The FSEIR reports that at present, American Canyon uses less than one-half of the amount of water allocated to it, but it appears that by the year 2015, the combined needs of the city and the Project will exceed American Canyon's aqueduct allotment. The FSEIR further reports that American Canyon is in the process of reaching an agreement with the City of Vallejo that will permit American Canyon to purchase additional water from a water treatment facility in that nearby town. The FSEIR assumes that this water will prevent the anticipated shortfall. It therefore concludes that the Project's demand for water will not result in a significant effect.

It has been held that an EIR is inadequate if it fails to identify at least a potential source for water. In ***373***Stanislaus Natural Heritage Project v. County* *of Stanislaus* (1996) 48 Cal.App.4th 182 [55 Cal.Rptr.2d 625], for example, the failure to identify a source of water beyond the first five years of development rendered the EIR inadequate, although the developer was pursuing several possible sources. It also has been held that an EIR is inadequate if the project intends to use water from an existing source, but it is not shown that the existing source has enough water to serve the project and the current users. (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818 [173 Cal.Rptr. 602].) On the other hand, it has been held that an EIR is not required to engage in speculation in order to analyze a "worst case scenario." (*Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671 [246 Cal.Rptr. 317] (hereafter *TRIP*).) In that case, the court held that an EIR was not required to analyze the effects that would result from the construction of a sewage treatment facility, when (1) all indications suggested that the facility would never be needed, and (2) the facility-if it was constructed-would be subjected to its own environmental review.

The present situation falls somewhere between that at issue in *TRIP* on the one hand, and those in *Stanislaus* and *Santiago*, on the other.In *TRIP*, affected cities had entered into agreements designed to provide service sufficient to meet the project's needs. In the present case, the necessary agreements have not yet been reached, and as the Project has no control over those agreements, it cannot ensure that they will be reached. Unlike the EIR in *Santiago*, the FSEIR does consider the impact of the Project's needs on the area's resources and the ability of those resources to meet the demands of other users. Unlike the situation in *Stanislaus,* the FSEIR has identified sources for water and facilities for the treatment of wastewater, although their availability has not been absolutely established. Moreover, the FSEIR analyzes the capacities of the existing systems and concludes that the anticipated resources, if available, will be able to handle the Project area's needs for water and disposal of wastewater.

It follows that a compromise between the positions adopted in those cases is in order. We conclude that the FSEIR need not identify and analyze all possible resources that might serve the Project should the anticipated resources fail to materialize. Because of the uncertainty surrounding the anticipated sources for water and wastewater treatment, however, the FSEIR also cannot simply label the possibility that they will not materialize as "speculative," and decline to address it. The County should be informed if other sources exist, and be informed, in at least general terms, of the environmental consequences of tapping such resources. Without either such information or a guarantee that the resources now identified in the FSEIR ***374** will be available, the County simply cannot make a meaningful assessment of the potentially significant environmental impacts of the Project. (See *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1237 [32 Cal.Rptr.2d 19, 876 P.2d 505].)

2. *Identification and Analysis of Mitigation Measures*

The FSEIR set forth the following measures to mitigate the impact the Project can be expected to have on treatment of wastewater at the Soscol Treatment Plant during the "interim period" before the plant completes the planned expansion and before American Canyon diverts its wastewater to Vallejo: (1) "Prior to permit approval, the NSD should review all new large development proposals to determine their ability to service the site"; (2) "[I]ndustries that produce large volumes of sewage should provide on-site pretreatment and storage of wastes for a controlled release into the sewer system"; and (3) "Temporary treatment and/or storage ponds should be provided to increase the biological treatment capacity of the existing facilities pending the implementation of the planned Soscol Treatment Plant expansion."

Once the FSEIR concluded that the Project would have no significant effect on water resources, it became unnecessary for it to analyze measures that would mitigate the Project's effect on water sources. The FSEIR nonetheless set forth the following general policies, characterizing them as mitigation measures: (1) "The County should coordinate future projects and associated water demand in the Plan Area with American Canyon and the NSD to further ensure that adequate water supplies and treatment are provided in a timely manner"; (2) "The County should promote the design, utilization and construction of water conservation devices within proposed buildings and landscape plans"; and (3) "The County should promote the utilization of reclaimed water to minimize potable water use."

These measures and policies would be adequate if the identified sources for water and treatment of wastewater were certain. As they are not certain, however, and as we have found that the FSEIR is inadequate in failing either to identify new sources or to report that none is available, the FSEIR also is inadequate in failing to identify and analyze appropriate mitigation measures related to the alternative sources, if any. In theory, at least, the FSEIR also could state a mitigation measure that would prevent development if the identified sources fail to materialize. As it stands, however, the FSEIR's discussion of wastewater and water is inadequate. ***375**

Conclusion

In conclusion, the FSEIR's identification of significant effects, and its discussion of mitigation measures relating to traffic, is adequate. Its identification of significant effects on growth and housing is adequate. It need not include a discussion of mitigation measures related to future growth outside of the Project area, notwithstanding that the Project may contribute to that growth. The FSEIR, however, is inadequate in failing to identify and analyze alternative sources for water and resources for treatment of wastewater. As no such resources and sources have been identified, we cannot and do not here determine what kind of analysis of them might be required or whether there are mitigation measures relating to them that need to be discussed.

Consistency of Updated Specific Plan with County's General Plan

A. *Relevant Provisions of the County's General Plan*

The circulation element of County's General Plan recognizes six levels of traffic congestion, LOS A through LOS F. The General Plan recites that roadways operating at LOS D or lower are candidates for improvement. It estimates the increase in number of trips over the county's roadways as can be expected to occur as the County and surrounding areas are developed and their populations grow, concluding that by the year 2000, assuming no major changes are made in the highway system, the average peak hour traffic conditions will have reached or exceeded LOS D along a number of roadways in the Project area.

The General Plan includes "Goals" of developing a comprehensive circulation system for the County and of improving the county roadway system so as to increase the area's ability to handle current and future traffic. It includes supplementary "Policy Guidelines" designed to "[c]ontinue or commence planning and engineering activities to improve levels of service" on designated "critical links in the highway system." It then describes a number of projects that would improve the levels of service on these highways, and sets forth a recommended improvement program for the County through the year 2000. Included in these improvements are the improvements adopted in the 1986 Specific Plan but not carried forward into the 1998 Updated Specific Plan. FN9

FN9 For example, Policy Guideline 2a(2) concerns the construction of three grade separated interchanges at the intersections of State Route 29 and State Route 12, State Route 221 and American Canyon Road. As to that project, the General Plan's transportation system improvement program re-

> commends that preliminary plans, cost estimates and an EIR be prepared from 1982-1987, that final construction documents be prepared from 1988-1992 and that the improvements be constructed from 1993-2000. The 1986 Specific Plan, similarly, set forth a suggested capital improvement of widening State Route 29 from four to six lanes between State Route 221 and American Canyon Road. The 1998 Updated Specific Plan does not include such an improvement.

The General Plan's housing element recognizes the County's "responsibilities under Measure A [the County's 'Slow-Growth Initiative']," Measure ***376** J (the "Agricultural Lands Preservation Initiative") "and State Housing laws to address its housing needs independently and in concert with other local, regional, state and national private and public sector organizations." It acknowledges the objectives of the Association of Bay Area Governments "a. To increase the housing supply in accord with the Region's needs," "b. To maintain and improve existing housing so that it can better fill the Region's needs," and "c. To expand and conserve housing opportunities for lower income people." The General Plan sets forth eight "Goals," which can be summarized as: (1) facilitate the implementation of housing element programs for all economic segments of the population residing in the unincorporated areas of the County; (2) ensure that the County housing stock is continually maintained or upgraded for quality, safety and livability; (3) ensure that the designated County residential areas are continually maintained or improved for quality, safety and livability; (4) encourage choice and economic integration and eliminate discrimination based on improper factors; (5) ensure that lower and middle income housing in unincorporated County areas is maintained and developed in ways that increases the level of home ownership of low-income families and minimizes the need for employment-related private transportation; (6) encourage coordination between private and public parties to regulate, develop and make available housing stock; (7) work with cities, government, citizens, and the private sector to plan for housing services, facilities and accommodations, including housing; and (8) encourage energy efficiency.

The General Plan states many "Policies" and "Objectives" designed to further these goals. The General Plan does not require the County to build any housing units or to fund any housing, but it does require the County to continue programs that will promote housing, and requires the County to take action such as working with its cities, or with public and private groups, to promote the creation of affordable housing and to obtain funding for low-income households. Under Goal 5, concerning housing location, density and timing, the General Plan states policies of concentrating housing in urban areas. Policy 5.2 provides: "The County will assume that the density of urban development in the American Canyon Area precludes extensive future subdivision activity based on septic tanks and wells." Policy 5.8 provides: "The County will encourage the construction of residential units in commercial and industrial development to service jobs created by such ***377** development." Under Goal 6, concerning urban facilities and services, the General Plan states policies of ensuring that sufficient services are available to the County's housing units. Again, the General Plan does not define any particular action that the County should take; it simply provides that the County will discourage some kinds of development, encourage other kinds of development and will work with the owners of utilities.

B. *Relevant Provisions of Updated Specific Plan*

The circulation element of the Updated Specific Plan does not include any specific highway improvements. It also does not include any detailed statements of goals or policies comparable to those set forth in the General Plan. It recites that "[a] primary purpose of the circulation and transportation system is to improve regional access and to facilitate efficient local access throughout the Plan Area in a cost-effective manner." It includes two "Roadway System Objectives": "a) Where feasible, improve regional access to the Plan Area. b) Coordinate the local and regional roadway system into a logical, integrated circulation network." Finally, it provides: "Design, size, and improve roadways to adequately meet future traffic demands, consistent with County standards and additional standards set forth herein."

The Updated Specific Plan contains no housing element. Its only discussion of housing points out that the plan "does not change the amount of land designated for housing or increase or reduce the existing opportunities for housing development. Consequently, the Specific Plan is consistent with the existing Napa County Housing Element." The Updated Specific Plan nonetheless seeks to discourage "in-commuting" from areas outside the County, and therefore proposes that the General Plan be amended to add the following programs and measures: "(a) The County will seek to increase the housing opportunities within the County's existing urban areas, given the limitations of Measures 'A' and 'J', by: [a]uthorizing the development of residential uses within urban areas designated for industrial uses in the General Plan, on such designated parcels and areas on the east side of State Highway 221, south of and including the State Hospital, and [¶] [w]orking with the City of American Canyon to redesignate existing urban areas, adjacent to the City but outside of its adopted Sphere of Influence as additional housing opportunity sites. [¶] (b) The County will work with the cities of American Canyon and Napa to develop and adopt agreements ... to jointly designate appropriate housing sites which could be developed for housing." ***378**

C. *Effect of Failure to Adopt Affirmative Measures to Mitigate Adverse Effects on General Plan's Goals and Policies*

(12) "A project is consistent with the general plan ' "if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." ' [Citation.] A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a [project] must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan. [Citation.]" (*FUTURE v.Board of Supervisors, supra,*62 Cal.App.4th at p. 1336, quoting from *Corona-Norco Unified School Dist. v. City of Corona, supra,*17 Cal.App.4th at p. 994.)

General plans ordinarily do not state specific mandates or prohibitions. Rather, they state "policies," and set forth "goals." The County's General Plan is no exception, setting forth "goals" and supplemental "policy guidelines," and outlining improvements that would further these goals and policy guidelines. (13a) In finding that the Updated Specific Plan was inconsistent with the County's General Plan, the trial court, accordingly, found that it was fatally inconsistent with goals and policies set forth in the County's General Plan.

The County first contends that the goals and policies stated in its General Plan should not be viewed as directives, and the General Plan therefore should be read as advisory rather than mandatory. This contention conflicts with the recognition that consistency requires compatibility with the general plan's " 'objectives, policies, general land uses, and programs.' " (*Corona-Norco Unified School Dist. v. City of Corona, supra,*17 Cal.App.4th at p. 994, fn. 5.) The question is not whether there is a direct conflict between some mandatory provision of a general plan and some aspect of a project, but whether the project is compatible with, and does not frustrate, the general plan's goals and policies.

The County next acknowledges that the Updated Specific Plan's circulation element does not actually implement the goals and policies identified in the General Plan. The County also recognizes that the Updated Specific Plan requires no specific action that will further the General Plan's housing goals, policies or objectives. The County argues, however, that it does not follow that the Updated Specific Plan is inconsistent with the General Plan. It points out that the Updated Specific Plan includes roadway objectives that echo the General Plan's goals and policies, that the Updated Specific Plan does not harm the quality or availability of existing housing stock or designated ***379** residential areas, and that it does not conflict with the General Plan's goal of working with cities, other governmental units, developers and citizens to plan for housing. The County also points out, correctly, that the cases that have struck down a specific plan for inconsistency with a general plan, have concerned more than a failure to implement the general plan's goals and policies. In *FUTURE v. Board of Supervisors, supra,* 62 Cal.App.4th 1332, for example, the general plan specified that the designation "Low Density Residential" would be restricted to lands contiguous to the identified areas. It was held that a plan to develop housing designated "Low Density Residential" in an area that was not contiguous to any identified area was inconsistent with the general plan. (*Id.* at pp. 1340-1341.)

We are of the opinion that the consistency doctrine requires more than that the Updated Specific Plan recite goals and policies that are consistent with those set forth in the County's General Plan. We also are of the opinion that cases such as *FUTURE v. Board of Supervisors, supra,* 62 Cal.App.4th 1332, do not require an outright conflict between provisions before they can be found to be inconsistent. The proper question is whether development of the Project Area under the Updated Specific Plan is compatible with and will not frustrate the General Plan's goals and policies. If the Updated Specific Plan will frustrate the General Plan's goals and policies, it is inconsistent with the County's General Plan unless it also includes definite affirmative commitments to mitigate the adverse effect or effects.

We find support for this conclusion in *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90 [212 Cal.Rptr. 273]. The court in that case considered a possible conflict between the circulation and land use elements of a general plan. The land use element recognized the likelihood that the area's population would grow, and stated a goal of encouraging commercial development to support that growth. The circulation element, like the circulation element in the County's General Plan here, recognized the limitations of the area's roadways, finding that the roadways would not be able to handle a substantial increase in traffic. The circulation element included no specific means of increasing the circulation of traffic should growth occur, reciting that there were no funds available for any major projects on the highways. The circulation element stated a "goal" of encouraging the improvement of the highways, a "policy" of supporting the state in any plans to improve state highways traversing the county, and an "implementation measure" of lobbying for increased state funding for state highway improvements. (*Id.* at pp. 100-102.)The court found that the circulation and land use elements were internally inconsistent and contradictory. It also held that "the general plan cannot identify substantial problems ***380** that will emerge with its state highway system, further report that no known funding sources are available for improvements necessary to remedy the problems, and achieve statutorily mandated correlation with its land use element (which provides for substantial population increases) simply by stating that the county will solve its problems by asking other agencies of government for money." (*Id.* at p. 103.)

The question in *Concerned Citizens* was whether the general plan itself was flawed because it included inconsistent provisions, while the question here is whether the County's General Plan and the Updated Specific Plan contain inconsistent provisions. Nonetheless, the essential holding of the court in *Concerned Citizens* was that an inconsistency was created if the implementation of one provision will frustrate a policy stated in a second provision and there is no affirmative commitment to mitigate that adverse effect. The same principle applies here. The County cannot state a policy of reducing traffic congestion, recognize that an increase in traffic will cause unacceptable congestion and at the same time approve a project that will increase traffic congestion without taking affirmative steps to handle that increase. It also cannot state goals of providing adequate housing to meet the needs of persons living in the area, and at the same time approve a project that will increase the need for housing without taking affirmative steps to handle that increase.

The County suggests that even if it is not enough that the Updated Specific Plan states goals and policies similar to those stated in the General Plan, it should be enough that the Updated Specific Plan recites that the County will work towards improving the roadways and will work with nearby communities to provide suitable housing. As we noted earlier, in connection with our discussion of the EIR's analysis of mitigation measures for traffic congestion and circulation, an actual commitment to study a problem and to prepare and implement a plan to mitigate that problem may be a valid mitigation measure. (See *Federation of Hillside & Canyon Associations v. City of Los Angeles, supra,* 83 Cal.App.4th at pp. 1261-1262; *Rio Vista Farm Bureau Center v. County of Solano, supra,* 5 Cal.App.4th 351, 377; *Sacramento Old City Assn. v. City Council, supra,* 229 Cal.App.3d at pp. 1026-1030.)The Updated Specific Plan, however, makes no binding commitment to do anything to alleviate the impact the Project will have on traffic and housing.

Finally, the County, while acknowledging that the Project will create a need for housing for persons working within the Project area, also claims that the record discloses that development in the Project Area will not create ***381** a need for housing units. This claim is based on the Jobs and Housing Impact Analysis appended to the Updated Specific Plan. The analysis discloses that as of the time it was prepared there were more housing units than jobs in American Canyon and Napa City. It predicts that the same kind of jobs/housing imbalance will exist in those cities in the future. The analysis also, however, points out that the opposite is true for the three small Upvalley cities (St. Helena, Calistoga and Yountville) and for the unincorporated County. It further predicts that by the year 2015 there will be an overall housing shortage in the County of 6,650 units. As discussed earlier, the analysis estimates that 5,457 housing units will be needed to support the employees that can be expected to work in the Project area. The record, accordingly, does not support the County's claim.

D. *Water and Wastewater*

The parties did not argue in the trial court that the Updated Specific Plan's discussion of water and wastewater was inconsistent with the County's General Plan, and have not furnished us with a copy of the General Plan's conservation element which, presumably, includes a discussion of those topics. The County's conclusion that the Updated Specific Plan is consistent with the General Plan's conservation element is, however, invalidated by the fact that the FSEIR does not contain an adequate discussion of these topics.

Steelhead Trout

(14a) CEQA Guidelines section 15065, subdivision (a), provides that an agency shall find that a project has a significant effect on the environment if the project has the potential to “reduce the number or restrict the range of an endangered, rare or threatened species.” The trial court ruled that the FSEIR was inadequate in that it did not investigate and make findings as to the impact the Updated Specific Plan would have on steelhead trout, an endangered species. The County contends that the trial court was not entitled to make this ruling because the question of the effect of the Project on steelhead trout had not been adequately raised at the administrative level.

The 1986 Specific Plan, and the various drafts of the Updated Specific Plan, called for a number of measures designed to protect the integrity of the area's creeks and wetlands, including a 150-foot setback along Soscol Creek and a 75-foot setback along Fagan Creek. The draft EIR generally discussed the effect of the Updated Specific Plan on aquatic habitat and special status species, concluding that measures incorporated into the Updated Specific Plan-including, presumably, the creek setbacks-would reduce the effect of the Project to an acceptable measure. The draft EIR, however, was silent ***382** as to steelhead trout, a species that at that time was not listed as endangered. The County certified the FSEIR on April 21, 1998. The FSEIR, like the draft EIR, was silent as to steelhead trout, notwithstanding that by that time the steelhead trout had been identified as an endangered species.

Although it had certified the FSEIR, the County did not adopt the Updated Specific Plan until October 20, 1998. Instead, it continued to hold public hearings and receive letters and comments from interested persons, later amending the FSEIR as a result of this process. Public Resources Code section 21177 provides, as relevant here, "(a) No action or proceeding may be brought ... unless the alleged grounds ... were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." The County accordingly concedes that comments made and letters received after the FSEIR was certified, but before the Updated Specific Plan was adopted, may be considered in determining if the issue of steelhead trout was raised at the administrative level.

The subject of steelhead trout first was mentioned on April 28, 1998, during a discussion of creek setbacks. An attorney representing a property owner complained that the Updated Specific Plan allowed no development within a 150-foot setback along Soscol Creek, stating that the setback deprived the owner of the use of his property. He sought a statement in the plan that a 50-foot setback would be permitted if the applicant could convince the Fish and Game Department that water quality would be protected. The same attorney, representing another property owner, also sought a provision in the Updated Specific Plan that would permit a property owner to trade open space for a reduction of a setback, referring in this case to Fagan Creek.

The County, the attorney representing the landowners, and several other persons, discussed the possibilities of creating a variance procedure for setbacks along one or more creeks within the Specific Plan area, or for reducing the setbacks to 50 feet. Several commentators spoke in support of maintaining a 150-foot setback in order to preserve water quality. One of the County supervisors pointed out that Soscol Creek is a known fishery that includes steelhead spawn. This supervisor later pointed out that Fagan Creek is the fresh water supply for the Fagan Marsh Ecological Reserve, a valuable wetland habitat, urging the County to recognize that there are significant ecological reasons for preserving setbacks. A representative of the Friends of the Napa River also spoke at length about the importance of preserving the 150-foot setback limits, pointing out, among other things, that developers ***383** already were "asking for variances to these riparian corridors in order to place industrial buildings on these valuable watershed land[s]."

A letter from American Canyon, dated May 11, 1998, complains that the FSEIR fails to designate California coast steelhead trout as an endangered species, asserting that "This endangered species designation relates directly to an issue raised at the last hearing ... wherein it was requested that to avoid a 'takings claim' that the riparian set back along ... Soscol and Fagen Creeks should be modified from ... 150 to [no more than] 50 feet." American Canyon continued, "Should this occur, not only is this a substantive change in the Specific Plan, but also an impact bearing directly on the habitat of the designated endangered species which is not acknowledged or assessed presently in the

FSEIR." In addition, American Canyon's vice-mayor complained at a later hearing, "I have a problem with Fagan Creek. Nothing seems to be being done about the steelhead trout that seem[ ] to [exist] in the Napa River and its tributaries."

As a result of these proceedings, the Updated Specific Plan was amended to permit variances when "the required creekside setbacks do not substantially advance a legitimate government interest or [deny] a property owner economically viable use of the land (or whatever is the current legal standard in effect for a 'takings' claim under the Fifth Amendment at the time the applicant seeks a variation from the requirements of this Specific Plan)." The amendment did not change the existing setbacks of 150 feet for Soscol Creek and 75 feet for Fagan Creek. The FSEIR was not amended to list steelhead trout as an endangered species, and it did not consider the effect of the Project, including the setbacks, on steelhead trout. It also did not consider whether the variances permitted under the amended Updated Specific Plan might have an effect on aquatic habitat.

The record does not indicate that any further challenge was made at the administrative level as to the failure of the FSEIR to address issues relating to steelhead trout.

In arguing that the effect of the Project on steelhead trout was not adequately raised at the administrative level, the County claims that the only point considered in the administrative proceedings was whether creekside setbacks should be reduced or whether variances should be granted. The County therefore contends that the trial court had the power to consider if the FSEIR was inadequate in failing to discuss setbacks and variances, but did not have the power to consider if the FSEIR was inadequate in its discussion of steelhead trout. We find, to the contrary, that the issue of steelhead trout was timely and adequately raised at the administrative level. ***384**

(15) The purpose of the rule of exhaustion of administrative remedies is to provide an administrative agency with the opportunity to decide matters in its area of expertise prior to judicial review. (*Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 859 [226 Cal.Rptr. 575].) The decisionmaking body " 'is entitled to learn the contentions of interested parties before litigation is instituted. If [plaintiffs] have previously sought administrative relief ... the Board will have had its opportunity to act and to render litigation unnecessary, if it had chosen to do so." [Citations.]' [Citation.]" (*Corona-Norco Unified School Dist. v. City of Corona, supra,* 17 Cal.App.4th 985, 997.)(14b) The record reflects that the County was made aware that steelhead trout is an endangered species, that at least one creek in the Project Area is a spawning area for steelhead trout and that care had to be taken to ensure that the trout were protected. CEQA Guidelines, section 15065, subdivision (a) provides that an agency shall find that a project has a significant effect on the environment if the project has the potential to "reduce the number or restrict the range of an endangered, rare or threatened species." The comments made during the administrative proceeding, together with the letter from American Canyon, should have alerted the County that the FSEIR needed to consider the impact of the Project on steelhead trout. The issue thus was adequately raised at the administrative level.

City of Walnut Creek v. County of Contra Costa (1980) 101 Cal.App.3d 1012 [162 Cal.Rptr. 224], cited by the County, is distinguishable. The project in that case was the construction of an apartment building. The City of Walnut Creek argued during the administrative proceedings that the project was inconsistent with the city's general plan, and that its population density would exceed the density permitted on adjacent city land. In response to this argument, the county lowered the project density so that it was more compatible with the city's general plan. In the trial court, however, the city for the first time contended that the project violated the county's own general plan. The appellate court characterized the new argument as having "the effect of turning the administrative hearings into 'shadow-play,' in the sense that a key issue in the case [violation of the county's general plan] was not specifically dealt with." (*Id.* at p. 1021.)While it is true that the issue of steelhead trout was not specifically dealt with at the administrative level, unlike the situation in *City of Walnut Creek*, the issue was definitely *identified* at the administrative level.

It is irrelevant that it was never shown that recognizing the status of steelhead trout as an endangered species would necessitate major revisions to the FSEIR. As the trial court pointed out, the burden is not on the ***385** objectors to show that a project will cause a significant effect on the environment. The burden is on the EIR to consider and decide if a project will cause a significant effect.

Therefore, once the issue of steelhead trout was identified, the burden shifted to the County to investigate the effect of the Project on that species. If the investigation resulted in a finding that the Project's effect on steelhead trout would be significant, the FSEIR had to set forth the basis for that determination, had to analyze that effect and had to identify and analyze measures that could mitigate that effect. Thus, depending on the results of the investigation, it would be necessary to draft and circulate an amendment or supplement to the FSEIR, or to draft an addendum sufficient to inform the public of that conclusion and the reasons for it. FN10

FN10 Under CEQA, a lead agency may require the preparation of a subsequent EIR when "(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report. [¶] (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. [¶] (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." (Pub. Resources Code, § 21166; CEQA Guidelines, § 15162.) In addition, the lead agency may require the preparation of a supplemental EIR when the conditions which would require the preparation of a subsequent EIR are present but only minor additions or changes would be necessary to make the previous EIR adequate for the project as revised. (CEQA Guidelines, § 15163, subd. (a).) Both a subsequent EIR and a supplemental EIR must be circulated and reviewed in the same manner as the original EIR. (CEQA Guidelines, §§ 15162, subd. (d), 15163, subds. (c) & (d).) The public entity also may prepare an addendum to an EIR when changes to an EIR are necessary but none of the conditions described in CEQA Guidelines, section 15162, in connection with subsequent EIR's, have occurred. (CEQA Guidelines, § 15164, subd. (a).) An addendum need not be circulated for public review, but can be included in or attached to the final EIR. (CEQA Guidelines § 15164, subd. (c).)

The County suggests that there was no need to consider the necessity of adopting measures to mitigate any effect of the Project on steelhead trout because the Updated Specific Plan simply readopted the setback requirements in the 1986 Specific Plan, which had been analyzed in the 1986 EIR. As the County argued in connection with the traffic issues, however, the mitigation measures adopted in 1986 are not binding. Indeed, the FSEIR does not simply modify the 1986 EIR, it replaces it. It therefore is subject to the same review as would be required of an original EIR. In addition, the need for an effective review is particularly compelling here, as steelhead trout were not listed as an endangered species in 1986, and it is not at all clear that steelhead trout were considered in the drafting of the 1986 EIR. ***386**

Conclusion

(16) The body that adopts general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. It follows that a reviewing court gives great deference to an agency's determination that its decision is consistent with its general plan. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra,*87 Cal.App.4th at p. 142.) "Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. [Citations.] A reviewing court's role 'is simply to decide whether the [public] officials considered the applicable policies and the extent to which the proposed project conforms with those policies.' [Citation.]" (*Id.* at p. 142.)

Nonetheless, "[w]hen the informational requirements of CEQA are not complied with, an agency has failed to proceed in 'a manner required by law' and has therefore abused its discretion. [Citations.]" (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra,*87 Cal.App.4th at p. 118.)In addition, "although the agency's factual determinations are subject to deferential review, questions of interpretation or application of the requirements of the CEQA statute are matters of law. [Citations.] While we may not substitute our judgment for that of the decision makers, we must ensure strict compliance with the procedures and mandates of the statute. [Citation.] " (*Ibid.*)

(13b) We have concluded that the FSEIR failed to provide sufficient information as to the effects development of the Project might be expected to have on the region's water supply and the need for treatment of wastewater. That conclusion necessarily invalidates the finding that the Updated Specific Plan is consistent with the General Plan's conservation element. We have concluded that the Updated Specific Plan is inconsistent with the General Plan in failing to take affirmative steps to mitigate the impact the Project will have on traffic and circulation, including the failure to make an affirmative commitment to implement the traffic study. We have concluded that the Updated Specific Plan also is inconsistent with the General Plan in failing to take affirmative steps or make an affirmative commitment to mitigate the effect the Project will have on housing and growth, notwithstanding that no housing units will be built within the Project area. Finally, we find that the FSEIR is inadequate in its discussion of steelhead trout.

The inadequacies of the FSEIR necessarily invalidate the County's certification of the FSEIR and adoption of the Updated Specific Plan. The ***387** inconsistencies between the County's General Plan and Updated Specific Plan also require a finding that the County abused its discretion in adopting the Updated Specific Plan. The judgment granting the petition for writ of mandate, therefore, is affirmed.

The Cross-appeal

Timeliness of Cross-appellants' Attack on General Plan

(17) Petitioners contended that the deletion of the traffic mitigation measures in the 1986 Specific Plan not only rendered the Updated Specific Plan inconsistent with the County's General Plan, but invalidated the circulation element of the General Plan, creating an inconsistency between its circulation element and its land use element. The trial court ruled that any attack on the County's General Plan was time barred by Government Code section 65009, subdivision (c)(1).

Government Code section 65009, subdivision (c)(1) provides:

"(c)(1) Except as provided in subdivision (d) [not applicable here], no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision:

"(A) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan. This paragraph ... does apply to an action attacking a general plan or mandatory element thereof on the basis that it is inadequate."

Petitioners interpret these provisions as providing a 90-day "window of opportunity" to attack a general plan on inadequacy grounds when there has been an action challenging a specific plan.

First, Petitioners are not attacking the County's General Plan on inadequacy grounds. Their claim, rather, appears to be that the plan is internally inconsistent.

Second, Petitioners misconstrue Government Code section 65009. The express purpose of section 65009 is "to provide certainty for property owners and local governments regarding decisions made pursuant to this division." Decisions made on the basis of the provisions of a general plan would provide no security if that plan becomes subject to change anytime a ***388** specific plan is either adopted or amended. The relevant legislative history, although not unambiguous, also fails to support Petitioners' interpretation. Section 65009, as it currently exists, was passed despite heated opposition claiming that it unreasonably limited the time for challenges to general plans notwithstanding that changes in circumstances over time could affect the adequacy of a general plan.

We therefore interpret Government Code section 65009 as providing that the decision to adopt a general plan or a specific plan may be attacked no later than 90 days after that decision was made. Similarly, a decision to amend a general plan or a specific plan may be brought no later than 90 days after that decision was made. Section 65009, however, should not be interpreted as permitting an attack on a general plan 90 days after a decision was made to adopt or amend a specific plan. The 90-day period is attached to the decision under attack, and to no other decision.

The cases cited by Petitioners in support of their argument are unpersuasive. In *Garat v. City of Riverside* (1991) 2 Cal.App.4th 259 [3 Cal.Rptr.2d 504],overruled on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11 [29 Cal.Rptr.2d 804, 872 P.2d 143], the court rejected a claim that the adoption of a measure amending a portion of a general plan permitted a challenge to the plan as a whole on grounds of inadequacy. The court found, in part, the under Government Code section 65009, "actions 'attacking a general plan or mandatory element thereof on the basis that it is inadequate' must be brought in the context of an action '[t]o attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan.' " (2 Cal.App.4th at p. 289.)Petitioners argue that the court thereby recognized that an action to amend a specific plan creates a window of opportunity to attack a general plan. The issue in *Garat* had nothing to do with specific plans and, at best, the cited language was nothing other than dicta. Moreover, the court in that case *rejected* a claim that an amendment of a general plan permitted an attack on unamended portions on the grounds of inadequacy, finding, "this limitation on actions challenging general plans is entirely consistent with the expressed legislative desire for finality and certainly set forth in section 65009, subdivision (a)(3)." (*Ibid.*)Petitioner's contention that an amendment to a specific plan permits an attack on a general plan on grounds of inadequacy is completely inconsistent with this holding.

The Court in *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 [270 Cal.Rptr. 650] found only that defects in a general plan invalidated the decision to approve a project. Because the action involved an ***389** attack on the decision to approve the project, as opposed to an attack on the general plan itself, the controlling statute of limitations was not Government Code section 65009, but "Government Code section 65907 which requires commencement of suit within 90 days *after the date of the decision to approve the permit.*[Citation.]" (221 Cal.App.3d at pp. 741-742, original italics.) *Flavell v. City of Albany* (1993) 19 Cal.App.4th 1846 [25 Cal.Rptr.2d 21] similarly involved a challenge to an ordinance as it related to the City of Albany's general plan. Although the argument was made that the housing element of the general plan was legally inadequate, the challenge was to the *ordinance*; i.e., it was argued that the inadequacy of the general plan invalidated *the ordinance.* In the present case, the challenge has been brought against the County's General Plan itself. Government Code section 65009, therefore, is the controlling statute of limitations.

We conclude, therefore, that the trial court correctly found Petitioners' attack on the County's General Plan to be time-barred. Moreover, even if Petitioners had the power to challenge the County's General Plan, they cannot do so by arguing-as they do-that the adoption of the Updated Specific Plan renders the General Plan invalid. If the Updated Specific Plan is inconsistent with the General Plan, the Updated Specific Plan is invalid; but the General Plan is unaffected. The court in *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541 [277 Cal.Rptr. 1, 802 P.2d 317] established this point in connection with the claim that a zoning ordinance essentially amended a general plan, rendering it invalid: "The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a pro tanto repeal or implied amendment of the general plan. The general plan stands. A zoning ordinance that is inconsistent with the general plan is invalid when passed [citations] and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. [Citation.] The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform."

Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176 [203 Cal.Rptr. 401], cited by Petitioners, similarly establishes only that an inadequate general plan may have the effect of invalidating a decision lower on the hierarchy of land use planning. "[T]he scope of authority of the agency to enact a general plan and zoning ordinances and *to apply them* is governed by the requirements of state law. A permit action taken without compliance with the hierarchy of land use laws is ultra vires as to any defect implicated by the uses sought by the permit." (*Id.* at p. 1184,***390** original italics.) Petitioners, again, are not arguing that an alleged inadequacy in the General Plan renders the Updated Specific Plan invalid. They are arguing that the adoption of the Updated Specific Plan renders the General Plan invalid. They are indeed seeking to have the tail wag the dog.

The trial court correctly ruled that Petitioners' attack on the County's General Plan was time-barred.

Disposition

The judgment is affirmed. The order sustaining the County's demurrer to petitioners' complaints is affirmed. Each party will bear its own costs on appeal.

Strankman, J., FN* and Marchiano, J., concurred.

FN* Retired Presiding Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A petition for a rehearing was denied September 4, 2001, and on August 7, and September 4, 2001, the opinion was modified to read as printed above. The petition of appellant Napa County Board of Supervisors for review by the Supreme Court was denied October 17, 2001. ***391**

Cal.App.1.Dist.
Napa Citizens for Honest Government v. Napa County Bd. of Supervisors
91 Cal.App.4th 342, 110 Cal.Rptr.2d 579, 00 Cal. Daily Op. Serv. 6732, 2001 Daily Journal D.A.R. 8157

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EXHIBIT 12

H

SAN FRANCISCANS UPHOLDING THE DOWNTOWN PLAN et al., Plaintiffs and Appellants, v. CITY AND COUNTY OF SAN FRANCISCO et al., Defendants and Respondents; FOREST CITY DEVELOPMENT, INC., et al., Real Parties in Interest and Respondents.
Cal.App.1.Dist.

SAN FRANCISCANS UPHOLDING THE DOWNTOWN PLAN et al., Plaintiffs and Appellants,
v.
CITY AND COUNTY OF SAN FRANCISCO et al., Defendants and Respondents; FOREST CITY DEVELOPMENT, INC., et al., Real Parties in Interest and Respondents.
No. A095827.

Court of Appeal, First District, Division 3, California.
Sept. 30, 2002.

SUMMARY

A citizen group and individual residents of a city petitioned for a writ of mandamus, seeking to invalidate a redevelopment project that required the demolition of a historically significant building. Plaintiffs alleged that the city and its agencies and representatives abused their discretion in certifying the project environmental impact report (EIR), amending the redevelopment plan, and approving the project, in violation of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), the city's planning code, the city's general plan, and the California Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.). The trial court denied the petition. (Superior Court of the City and County of San Francisco, No. 316912, A. James Robertson II, Judge.)

The Court of Appeal affirmed. The court held that the city's findings and determination approving the redevelopment project were consistent with the city's general plan, since substantial evidence supported the conclusion that the building had no substantial remaining market value. The court also held that the expert economic analysis that was relied on to support the city's findings was not inadequate, untrustworthy, or insufficient. The court further held that the EIR regarding the project did not have to address the economic feasibility of the alternatives to the project in addition to the environmental impact of those alternatives. The court held that the administrative record contained substantial evidence to support a finding by the city's board of supervisors that the preservation alternatives identified in the EIR were infeasible. The court also held that the EIR adequately discussed mitigation of traffic and parking impacts. The court further held that the evidence was sufficient to satisfy findings of physical and economic blight, as well as the finding that the blighted condition of the area constituted a serious physical and economic burden on the community that could not reasonably be expected to be alleviated or reversed without redevelopment, as required under the Community Redevelopment Law, in order to support putting the redevelopment project under the jurisdiction of the city's redevelopment agency rather than the city. (Opinion by McGuiness, P. J., with Corrigan and Parrilli, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 99--Judicial Review and Relief--Administrative Mandamus.
The inquiry for the issuance of a writ of administrative mandamus (Code Civ. Proc., § 1094.5) is whether the agency in question prejudicially abused its discretion; that is, whether the agency action was arbitrary, capricious, in excess of its jurisdiction, entirely lacking in evidentiary support, or without reasonable or rational basis as a matter of law. The court may neither substitute its views for

those of the agency, nor reweigh conflicting evidence presented to that body. On appeal, the appellate court is governed by the same abuse of discretion standard in pursuing essentially the same task as that of the trial court. Like the trial court, the appellate court reviews the agency's actions and decisions to determine whether they were in compliance with the procedures required by law and were supported by findings which themselves were supported by substantial evidence in light of the entire administrative record. In so doing, the appellate court's review is de novo, and it is not bound by the trial court's conclusions. The decisions of the agency are nevertheless given substantial deference and presumed correct. The parties seeking mandamus bear the burden of proving otherwise, and the reviewing court must resolve reasonable doubts in favor of the administrative findings and determination.

(2) Zoning and Planning § 16--Community Redevelopment Plans--Proceedings-- Judicial Review--Findings of Urbanization and Blight.
In reviewing an agency's adoption of a redevelopment plan or amendment under the Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.), the court must determine whether substantial evidence in the administrative record supports the agency's specific findings of urbanization and blight.

(3a, 3b, 3c) Zoning and Planning § 16--Community Redevelopment Plans--Agency Findings and Project Approval--Consistency with General Plan--Demolition of Historically Significant Building.
A city's findings and determination approving a redevelopment project, which required the demolition of a historically significant building, were consistent with the city's general plan, since substantial evidence supported the conclusion that the building had no substantial remaining market value. The city relied on the expert analyses of two consultants, and each one independently concluded that, even after taking into account all possible monetary incentives for historic preservation, the substantial costs of rehabilitating and preserving the building would be millions of dollars more than the value the building could thereafter generate in its existing configuration, through any plausible revenue-producing usage, whether retail, office or residential. Under these circumstances, the building had no remaining market value. In coming to this conclusion, one of the consultants examined five different development alternatives involving preservation of the historic building, and under any alternative, the building would necessarily have had a net negative value of several million dollars. The consultant's report, analysis, and conclusions were independently verified and confirmed by the city's independent real estate valuation expert.

(4) Zoning and Planning § 13--Administrative Decisions on Consistency with General Plans--Standard of Review--Deference to Public Agency's Determination.
The standard for judicial review of administrative decisions by local public agencies with respect to consistency with applicable general plans is whether the local adopting agency has acted arbitrarily, capriciously, or without evidentiary basis. A local public agency's findings that a project is consistent with its general plan can be reversed only if they are based on evidence from which no reasonable person could have reached the same conclusion. Courts accord great deference to the agency's determination of consistency with its own general plan, recognizing that the body that adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. Because policies in a general plan reflect a range of competing interests, the agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. A reviewing court's role is simply to decide whether the officials considered the applicable policies and the extent to which the proposed project conforms with those policies. State law does not require an exact match between the project and the applicable general plan.

A finding of consistency requires only that the project be compatible with the objectives, policies, general land uses, and programs specified in the applicable plan. Since the question of substantial compliance with the general plan is one of law, the appellate court need not give deference to the conclusion of the trial court.

(5) Counties § 5--Boards of Supervisors--Board's Reading of General Plan-- Standard of Review.
A board of supervisor's reading of its own city's or county's general plan enjoys a strong presumption of regularity. In evaluating whether the board abused its discretion, the reviewing court is obliged to give the board's finding of consistency great deference, without substituting its own views for those of the board, or reweighing conflicting evidence in the record.

(6a, 6b) Zoning and Planning § 16--Community Redevelopment Plans--Agency Findings and Project Approval--Consistency with General Plan--Demolition of Historically Significant Building--Evidence--Expert Economic Analysis.
The expert economic analysis that was relied on to support a city's findings and determination approving a redevelopment project requiring the demolition of a historically significant building was not inadequate, untrustworthy, or insufficient, even if the analysis did not contain all the information required by the city planning code for a permit application to demolish a historic building. The planning code did not apply; it would have applied only if the city's finding of blight was set aside and a determination had been made that the project was approved in violation of the community redevelopment law. Moreover, although one of the experts was a paid consultant retained by the interested parties, a second consultant and the city architect both provided an independent review and corroboration of the first consultant's analysis. Together, their reports constituted substantial evidence in support of the city's ultimate decision that the building retained no substantial remaining market value and approval was therefore consistent with the general plan. Opponents of the project waived their opportunity to present their own attempted analysis, since they failed to present it at any point during the multiyear preapproval administration process. In any event, their own analysis was faulty. Thus, the responsible city agencies did not abuse their discretion or act arbitrarily, capriciously, or without evidentiary basis in approving the project.

(7) Administrative Law § 88--Judicial Review and Relief--Exhaustion of Administrative Remedies--Challenge to Planning Decision.
Exhaustion of administrative remedies is a jurisdictional prerequisite to a judicial action challenging any governmental planning decision. If a party wishes to make a particular methodological challenge to a given study relied upon in planning decisions, the challenge must be raised in the course of the administrative proceedings. Otherwise, it cannot be raised in any subsequent judicial proceedings.

(8) Pollution and Conservation Laws § 2.9--California Environmental Quality Act--Proceedings--Judicial Review.
Judicial review under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) is generally limited to the question whether the public agency has abused its discretion by not proceeding as required by law, or by making a determination not supported by substantial evidence. The court must be careful not to interpret the provisions of either CEQA or the CEQA regulatory guidelines in a manner that imposes procedural or substantive requirements beyond those explicitly stated in CEQA and its guidelines. The appellate court's role in applying this test is identical to that of the trial court. The appellate court must independently review the administrative record to determine whether it is free from legal error. Thus, the conclusions of the trial court, and its disposition of the issues in the case, are not conclusive on appeal.

(9) Pollution and Conservation Laws § 2.4--California Environmental Quality Act-

-Environmental Impact Reports--Contents and Sufficiency of Report-- Alternative Measures--Failure to Include Economic Feasibility Analysis.

An environmental impact report (EIR) regarding a proposed redevelopment project did not have to address the economic feasibility of the alternatives to the project in addition to the environmental impact of those alternatives. The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) states that the purpose of an EIR simply is to identify the significant effects on the environment of a project, to identify alternatives, and to indicate the manner in which those effects can be mitigated or avoided. Under CEQA, it is the public agency, not the EIR, that bears responsibility for making findings as to whether specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or alternatives identified in the EIR, or whether there are specific overriding economic, legal, social, technological, or other benefits of the project that outweigh the significant effects on the environment. The CEQA guidelines explicitly support this interpretation (Cal. Code Regs., tit. 14, § 15131). In this case, the EIR discussed a reasonable range of feasible alternatives and compared their environmental impacts with those of the project. The administrative record provided ample evidence and analysis of the economic feasibility of the alternatives, which was available to the city, its agencies, and the public to evaluate before making the ultimate decision to certify the EIR and approve the project. CEQA did not require more.

[See 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 59 et seq.; West's Key Number Digest, Environmental Law 🔑 604(2).]

(10) Pollution and Conservation Laws § 2.4--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency of Report-- Alternative Measures--Finding of No Feasible Alternatives.

The administrative record contained substantial evidence to support a finding by a city board of supervisors that, with regard to a proposed redevelopment project requiring the demolition of a historically significant building, the preservation alternatives identified in an environmental impact report (EIR) were infeasible. The EIR identified and discussed in detail five alternatives to the proposed project. Economic analyses of each of the alternatives showed that any development of the area would require a significant infusion of public money. The more historic preservation required, the higher the costs of rehabilitation and the lower the projected profitability of the final project. The project approved was the only alternative for which the entire public investment could be covered by the city's portion of increased tax revenues generated by the project. The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) does not require that an agency select the alternative course most protective of the environmental status quo. The only purpose of CEQA is to guarantee that the public and the government agencies will be informed of environmental impacts, that they will consider those impacts before acting, and that insofar as practically possible, feasible alternatives and mitigation measures will be adopted to lessen or avoid adverse environmental impacts. The record showed these purposes of CEQA were met in this case.

(11a, 11b, 11c) Pollution and Conservation Laws § 2.5--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency of Report--Mitigation Measures--Traffic and Parking Impacts.

An environmental impact report (EIR) for a redevelopment project adequately discussed mitigation of traffic and parking impacts. The EIR discussed potential traffic impacts and parking shortfalls in detail and identified specific mitigation measures to reduce the significant traffic impacts of the project, including adjustment of traffic signal timing, alteration of traffic lines at intersections expected to experience traffic congestion impacts, and development and implementation of public transit incentive programs for project employees and patrons. The EIR concluded the mitigation measures identified would significantly reduce the adverse traffic impacts. The analysis of traffic impacts and identification of mitigating measures was clearly sufficient and supported by substantial evidence. The EIR correctly concluded that parking shortfalls relative to demand were not considered significant environmental impacts in the urban context of the city. The EIR then fulfilled its statutorily mandated purpose by identifying ways in which the secondary environmental impacts resulting from the projected parking deficits could be mitigated, in keeping with the specific environmental strictures imposed by the city's own transit-first policy. The reviewing court could not reweigh the evidence or impose its opinion that identified adverse effects could be better mitigated than as suggested in the EIR. The EIR in this case was sufficient as a matter of law.

(12) Pollution and Conservation Laws § 2.5--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency of Report-- Mitigation Measures--Judicial Review.
With regard to the discussion of mitigation measures, an environmental impact report (EIR) need not be exhaustive or perfect; it is simply required to describe feasible measures that could minimize significant adverse impacts. The court reviews the discussion on the EIR of mitigation measures by the traditional substantial evidence standard. It is not the court's task to determine whether adverse effects could be better mitigated.

(13) Pollution and Conservation Laws § 2.5--California Environmental Quality Act--Environmental Impact Reports--Contents and Sufficiency of Report-- Mitigation Measures--Parking.
An environmental impact report (EIR) is not required to identify specific measures to provide additional parking spaces in order to meet an anticipated shortfall in parking availability. The social inconvenience of having to find scarce parking spaces is not an environmental impact; the secondary effect of scarce parking on traffic and air quality is. Under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), a project's social impacts need not be treated as significant impacts on the environment. An EIR need only address the secondary physical impacts that could be triggered by a social impact.

(14a, 14b) Zoning and Planning § 16--Community Redevelopment Plans-- Evidence of Blight--Physical Blight.
The exhaustive analyses contained in a redevelopment agency's existing conditions survey report, the environmental impact report, and the agency's report to the city's board of supervisors provided substantial evidence to satisfy the finding of physical blight, as required under the Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.), in order to support putting a redevelopment project under the jurisdiction of the redevelopment agency rather than the city. All but one of the major buildings in the redevelopment area were built in or before 1955. Nine of the twelve buildings under consideration were in a seriously deteriorated condition, with significant physical deficiencies that rendered them unsafe and unhealthy for occupancy by workers and the public. At least eight of the twelve buildings were susceptible to collapse in the event of a moderate to strong earthquake. Like many commercial buildings built before the adoption in 1955 of the Uniform Building Code, the buildings had substandard foundations, poorly reinforced walls, inadequate connections between buildings and foundations, weak cripple walls, inadequate roof and floor membranes, and substandard construction. In part because of the abandoned and decrepit nature of the buildings in the area, various portions suffered from the blight of virtual skid row conditions, with homeless encampments and trash. The presence of these obvious symptoms of blight detracted considerably from the commercial viability of the redevelopment area in its current state.

(15) Zoning and Planning § 16--Community Redevelopment Plans--Judicial Review--Substantial Evidence.
On appellate review of a decision validating a re-

development plan under the Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.), the appellate court's role is a limited one. It is not the appellate court's place to reweigh the evidence or exercise its own independent judgment. The court must instead confine itself to determining whether the findings and determinations of the responsible agencies are supported by substantial evidence in the administrative record.

(16) Zoning and Planning § 16--Community Redevelopment Plans--Evidence of Blight--Economic Blight.
The evidence was sufficient to satisfy a finding of economic blight, as required under the Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.), in order to support putting a redevelopment project under the jurisdiction of a city's redevelopment agency rather than the city. Aside from the physical deterioration, functional obsolescence, and prohibitive expense making it infeasible to adapt the existing building to modern commercial use, economic blight was evidenced by the precipitous decline in sales at the site's department store throughout the 1990's, and the store's ultimate bankruptcy and closure in 1996. A reduction in assessed value was indisputable and powerful evidence of depreciated or stagnant property values or impaired investments, one of the definitions of conditions that cause economic blight under the controlling statute (Health & Saf. Code, § 33031, subd. (b)(1)). The existing conditions survey report showed that the rest of the project area consisted of dilapidated, derelict, vacant or underutilized buildings. Most of the buildings were economically obsolete because their physical plan was inappropriate for modern commercial or retail use. These factors were indisputable evidence of two of the statutory criteria of economic blight: depreciated or stagnant property values or impaired investments, and abnormally high business vacancies (Health & Saf. Code, § 33031, subd. (b)(1), (2)). There was also an elevated crime rate in the area, which independently establishes economic blight (Health & Saf. Code, § 33031, subd. (b)(5)).

(17) Zoning and Planning § 16--Community Redevelopment Plans--Evidence of Blight--Burden on Community Requiring Redevelopment.
The evidence was sufficient to satisfy a finding that the blighted condition of an area constituted a serious physical and economic burden on the community that could not reasonably be expected to be alleviated or reversed without redevelopment, as required under the Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.), in order to support putting a redevelopment project under the jurisdiction of a city's redevelopment agency rather than the city. The evidence showed that, without a substantial infusion of public assistance, planning, tax incentives and investment, the private market could not be expected to revitalize the redevelopment area. There was a massive financial gap between the extraordinarily high costs of preparing the site, rehabilitating and preserving the most historically and architecturally significant portions of the building, providing the necessary infrastructure for the large-scale project and making transit and circulation improvements in the area, and the feasible amount of investment that could reasonably be expected from private sources. This feasibility gap could only be filled with government assistance. The overwhelming evidence of this fact, found in a consultant's report and independently verified by the city's expert and the city architect, readily satisfied the Community Redevelopment Law's definition of blight for purposes of validating the inclusion of the project in the redevelopment area.

(18) Zoning and Planning § 16--Community Redevelopment Plans--Challenges-- Sufficiency.
A redevelopment plan may not be overturned on the basis of a speculative argument regarding possible private investment in the area at some future time.

(19) Zoning and Planning § 16--Community Redevelopment Plans--Challenges-- Sufficiency--Reliance on Matters Outside Administrative Record.
In challenging findings that the statutory conditions of blight under the Community Redevelopment

Law (Health & Saf. Code, § 33000 et seq.) were satisfied with regard to a redevelopment project, which permitted placing the redevelopment project under the jurisdiction of a city's redevelopment agency rather than the city, amici curiae erroneously and improperly relied on matters outside the administrative record, including their own studies and materials, as well as speculative assumptions about the rehabilitative history of other buildings in the downtown area. None of these materials or speculations were relevant or could be considered by the appellate court. If amici curiae had wished to include this evidence in the record, they should have done so during the lengthy administrative process. They did not do so, and it was too late to raise it on appeal.

COUNSEL
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Paul W. Edmondson and Elizabeth S. Merritt for National Trust for Historic Preservation, California Preservation Foundation and San Francisco Tomorrow as Amici Curiae on behalf of Defendants and Appellants.
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Morrison & Foerster, Michael H. Zischke and Steven L. Vettel for Defendant and Respondent Redevelopment Agency of the City and County of San Francisco.
Coblentz, Patch, Duffy & Bass, Jonathan R. Bass and Keith Evans-Orville for Real Parties in Interest and Respondents. ***666**

McGUINESS, P. J.

In October 2000, the City of San Francisco (City), acting through its board of supervisors (the Board), planning commission (the Commission), redevelopment agency (the Agency) and mayor, approved the expansion of the Yerba Buena Center Redevelopment Plan to include a massive redevelopment project (the Project) planned for the site of the former Emporium store in downtown San Francisco bounded by Market, Fourth, Mission and Fifth Streets (the Emporium Site Redevelopment Area). FN1 This appeal is from a judgment denying a mandamus writ petition filed by appellants San Franciscans Upholding the Downtown Plan, and five individual San Francisco residents, [FN2] seeking to invalidate the Project on the grounds the City and its pertinent agencies, agents and representatives abused their discretion in certifying the Project environmental impact report (EIR), amending the Yerba Buena Center Redevelopment Plan, and approving the Project, all in alleged violation of the California Environmental Quality Act (CEQA), the San Francisco Planning Code (Planning Code), the San Francisco General Plan, and the California Community Redevelopment Law.

> FN1 The Emporium Site Redevelopment Area contains the Emporium department store building at 835 Market Street, eleven adjacent structures and one vacant lot fronting on Jessie and Mission Streets, and portions of the Jessie and Mission Streets' rights-of-way.

> FN2 The five individual plaintiffs and appellants identified in the first amended petition for writ of mandate and complaint for validation filed on December 19, 2000, are Jennifer Clary, Doug Comstock, Garrett Jenkins, Mary Anne Miller, and Gee Gee Platt.

On appeal, appellants argue that the judgment denying their writ and validating the actions of respondents must be reversed because (1) the Project was inconsistent with the San Francisco General Plan, particularly that part of it known as the Downtown Area Plan (the Downtown Plan); (2) the City and its pertinent agencies violated CEQA by certifying an inadequate EIR and approving the Project despite its significant environmental impacts and the existence of feasible alternatives; and (3) there was insufficient evidence to support the finding of "blight" necessary to incorporate the Project site into the preexisting Yerba Buena Center Redevelopment Plan and thereby exempt it from compliance with the Planning Code and General Plan. Appellants' arguments are contested by respondents-the City, Commission, Board and Agency-as well as by real parties in interest Federated Department Stores, Inc. (Federated), Bloomingdale's, Inc. (Bloomingdale's), Emporium Development, L.L.C. (Emporium Development) and Forest City Development, Inc. (Forest City). FN3 In addition, a brief has been filed by the National Trust for Historic Preservation, California Preservation Foundation, ***667** and San Francisco Tomorrow as amici curiae in support of appellants. Based on our review of the administrative record in accordance with the applicable standard of review, we conclude that the trial court's judgment must be affirmed.

FN3 Federated, Bloomingdale's, Forest City and Emporium Development are collectively referred to as Real Parties in this opinion.

Factual and Procedural Background

The building housing the former Emporium department store (the Building) is located at 835 Market Street between Fourth and Fifth Streets in San Francisco, with its rear facing Jessie Street, a midblock alley running parallel to and between Market and Mission Streets. Originally built in 1896, the Emporium Building was designed by San Francisco architect Albert Pissis, one of the first Americans to be trained at the École des Beaux Arts in Paris. FN4 From the outset, the top five floors of the seven-story front section of the Building, originally known as the Parrott Building, were office space. For the first 10 years of the Building's existence, this office portion was the official designated seat of the California Supreme Court. The bottom two floors of the office portion on Market Street, together with the entire remainder of the Building, were devoted to the Emporium's retail space. This portion centered on a large, three-story open rotunda, 51 feet in height, ringed by a two-story pillared gallery and topped with a 102-foot-diameter ornate glass and metal dome.

FN4 The Emporium Building was built on the former site of the campus of St. Ignatius College. Architect Pissis, who was most active between 1890 and 1910, was well known for his classically inspired, monumental stone and terra-cotta buildings. Other Pissis landmarks in San Francisco include the Flood Building (City Landmark No. 154, across Market Street from the Emporium Building at Powell Street); the Hibernia Bank Building (City Landmark No. 130 at Jones and Market Streets); the Crocker Bank Building (Market and Montgomery Streets); the White House department store (Sutter and Grant Streets); and the Mechanics Institute (Post Street between Kearny and Market Streets).

The Emporium Building structurally withstood the 1906 earthquake. However, all but the sandstone 120-foot-tall Market Street facade of the original structure was thereafter destroyed by the subsequent fire. With the seven-story facade intact, the Building was rebuilt in 1908 in a similar fashion for the sole and express use of the Emporium. The facade and much of the structural steel in the original Building were reused, and all the interior arrangements remained similar. The 1908 Building, like the original one, included the seven-story office tower extending back from Market Street 65 feet, plus a four-story segment at the rear along Jessie Street. The two-story department store section extended between these higher segments. The three-story skylit rotunda surmounted by a glass dome was reconstructed. As completed, the rectangular Building was 275 feet wide and 355 ***668** feet deep, with a large central aisle almost 40 feet wide bisecting the space between Market and Jessie Streets through the central skylit rotunda.

The Emporium department store occupied the

Building continually from reconstruction in 1908 until 1996. During this period, the Emporium built or purchased several adjoining structures and made numerous changes to the main Building itself. In 1916, the Building was enlarged with a third floor added to the main retail space, opening onto the existing rotunda. In 1917, a nine-story, 200,000-square-foot annex was completed adjacent to the Jessie Street facade. Subsequently, six more buildings on the south side of Jessie Street were acquired by the Emporium. In 1933, an eighth additional building was built across Jessie Street and internally connected to the other, older warehouse buildings which had already been acquired. That same year, two pedestrian bridges across Jessie Street were completed, connecting the warehouse buildings on the Mission Street side with the older original Emporium Building on Market Street. The eight ancillary buildings were used by the Emporium for offices, storage, stocking, loading, receiving, and other activities; and generally were connected with each other and with the main Building by a system of long corridors, tunnels, bridges, stairs and elevators. Escalators were added to the Emporium Building in 1936. Various other changes were made in the 1950's, including closing off some openings on the second and third floors of the rotunda with blank panels. Between 1969 and 1970, the Emporium basement was connected to the new Bay Area Rapid Transit (BART) station at Powell Street. In 1977, the ground floor arcade windows on Market Street were removed to increase retail selling space. In 1989, the west side of the Emporium Building was opened into the new San Francisco Centre.

In 1979, as part of an survey of architecturally significant buildings, the Foundation for San Francisco's Architectural Heritage gave the Emporium Building its highest "A" rating, indicating that it was a building of the highest architectural and historical importance, one of the most important buildings in downtown San Francisco, eligible for the National Register, and of highest priority for city landmark status. The Downtown Plan, an official area plan in the larger San Francisco General Plan, rates the Building in category I of architectural significance. Category I buildings are those deemed by the General Plan to be of "highest architectural and environmental importance-buildings whose demolition would constitute an irreplaceable loss to the quality and character of downtown." The most significant features of the Building identified by the General Plan are the Market Street facade and office structure, the rotunda, and the dome. On the other hand, the Downtown Plan did not identify as significant architectural features the ***669** rest of the interior retail section of the Emporium or the Jessie Street facade. None of the eight ancillary buildings attached to the Emporium or the other three buildings and lots included in the Emporium Site Redevelopment Area has ever been designated as an architecturally significant building by the Downtown Plan. [FN5] As a category I building, the Emporium Building qualifies for special protection under several provisions of the Downtown Plan and articles 10 and 11 of the Planning Code.

> FN5 Aside from the Emporium Building, the other 11 buildings included in the Emporium Site Redevelopment Area are the Emporium Annex, the Emporium Marking Building, the West Dungeon, the East Dungeon, Hotel Del Mar, the Red Cross Building, the Hulse Bradford Building, the Milwaukee Furniture Building, the American Type Foundry Building, and two unnamed buildings located at 327 Jessie Street and 828 Mission Street.

Sales at the Emporium declined in the 1990's. In 1995, Federated and its affiliate Bloomingdale's became the owners of the Emporium Building and the eight adjoining buildings after Broadway Stores, Inc., the former owner of the Emporium, went bankrupt. The Emporium closed in 1996 due to significant financial losses. Except for a brief period when Macy's used the ground floor of the Emporium Building for its furniture department, almost all of the building space owned by Federated in the

Emporium Site Redevelopment Area has since been vacant. Two other smaller buildings not owned by Federated, located on Mission Street in the Emporium Site Redevelopment Area, are also largely vacant. According to Federated and the Agency, all that remains in these buildings are nonsalvageable fixtures, abandoned and deteriorated equipment, non-saleable inventory, temporary storage, and debris.

With the acquisition of the Emporium and its buildings, Federated and Bloomingdale's began investigating ways and means of restoring and reusing the existing Building and its eight ancillary buildings. The main Building and all eight of the ancillary structures were built between 1908 and 1955, well before the adoption of modern building codes. All were constructed either in whole or in part with unreinforced masonry walls subject to collapse in the event of a major earthquake; and none had undergone any seismic strengthening, retrofitting, or modern health, safety and accessibility upgrades. The layout of the Emporium's retail space was essentially unchanged since its construction and enlargement between 1908 and 1917, and reflected the styles and requirements of that bygone era. The Building's tightly spaced columns, insufficient floor-to-ceiling height, deficient display space, faded amenities, awkward circulation patterns and inadequate off-street loading areas rendered it functionally obsolete for purposes of contemporary department store usage. The eight ancillary buildings were awkwardly configured for convenience or any efficient usage, and even more dilapidated and unserviceable than the main Building. ***670**

In view of the prohibitive expense of remedying these structural problems and bringing the Building up to modern codes and standards, Federated concluded after thorough analysis that the financial investment required to rehabilitate the existing Emporium Building and its associated properties for use as a Bloomingdale's department store could not be economically justified by the anticipated return on such an investment. Federated consequently sought a partner to help it develop a project that could generate sufficient revenues to be financially feasible, and still preserve as much as possible of the architecturally significant features of the Emporium Building. Federated entered into an agreement with Forest City to redevelop the Building and its ancillary structures. Forest City prepared a plan for redevelopment of the Emporium and its auxiliary buildings which it believed was financially viable, but only with public economic assistance. The Project called for the replacement of most of the Emporium Building and all of the ancillary structures with new construction to house a new Bloomingdale's department store, a cinema, entertainment and restaurant space, other retail space, office space, and a hotel, while preserving some portions of the original Emporium Building.

Federated and Forest City then approached the City with the proposed Project to seek inclusion of the nine buildings in a new or existing redevelopment area in order to obtain Agency redevelopment assistance. Acting through the Agency, the planning department and the Commission, the City commenced a multiyear economic and environmental analysis of the Project in order to determine whether to offer it public redevelopment assistance. In July 1998, the planning department published notice that the Project would require an EIR.

The EIR analyzed the proposed Project and five other alternatives involving reduced demolition of or changes to the existing buildings. These alternative projects included no change at all to the buildings (Alternative A, No Project); a reduced project with no hotel included (Alternative B, Reduced Development); a project designed to preserve as much as possible of the existing historic structures (Alternative C, Conservative Preservation); a project involving somewhat less preservation of existing structures (Alternative D, Modified Preservation); and a project designed in accordance with existing planning controls (Alternative E, Existing Planning Controls). The EIR compared and analyzed in detail the relative environmental impacts and costs of the proposed Project with these various alternatives. It concluded that the Project would have significant adverse environmental impacts on architectural and historical resources due to the demolition and/or alteration of large portions of the Emporium Building, as well as significant environmental impacts on traffic and air quality. To address these impacts the EIR proposed various mitigating measures. ***671**

Real Parties contracted with the Sedway Group (Sedway), a San Francisco real estate economics consulting firm, to conduct a series of analyses of the economic impacts and feasibility of the Project as well as the five alternatives addressed by the EIR, including rehabilitation and preservation of the existing Emporium Building. In consultation with the City's independent expert Keyser Marston Associates, Inc. (KMA), the city architect and the planning department, and using construction cost estimates developed by the construction management firm of Swinerton & Walberg, Sedway concluded that the Emporium Building would cost more to rehabilitate than it would thereafter be worth on the market, and that the Building therefore had a *negative* market value. In consequence, the Real Parties' proposed Project would be financially infeasible without public subsidies. However, the subsidies required for the preservation alternatives considered by the EIR would be significantly greater than that required for the proposed Project. The City's expert KMA independently reviewed Sedway's analysis and conclusions. Like Sedway, KMA also concluded that in view of its condition and the costs of rehabilitation, the Emporium Building had no substantial remaining market value; all the preservation alternatives would be financially infeasible without public assistance; and the proposed Project would be the least costly solution, minimizing the amount of public subsidies required to render the Building usable and financially viable.

The Commission and the Agency published and circulated the draft EIR for the Project in October 1998. A comment period followed, and a public hearing on the draft EIR was held in December 1998. In response to public comments, Real Parties modified the Project to retain more of the Emporium Building's historic features than originally proposed. Among other things, the Project was revised to retain virtually the entire historic seven-story office block extending 65 feet in depth back from Market Street; and to reduce the number of feet the restored dome would be raised from 72 feet to 55 feet, thereby preserving the floor-to-dome height and architectural elements, proportions, and dimensions of the 1908 rotunda. In addition, a proposed pedestrian bridge over Mission Street was eliminated, the sidewalk facing Mission Street was widened, the space proposed for cinema and other entertainment usage was reduced, and Real Parties pledged to make a $1.25 million contribution for BART/MUNI Powell Street station improvements plus a $1.5 million contribution to the City for parking solutions in the South of Market Street (SOMA) area.

In August 1999, a supplement to the draft EIR incorporating and analyzing these revisions was published, with another public comment period and hearing following. The Commission and the Agency published and circulated a summary of comments and responses to the draft EIR and its ***672** Supplement on December 28, 1999, including written responses to all the comments received during the 45-day review period for the draft EIR and the subsequent 45-day review period for the supplement to the draft EIR. Following a joint public hearing, the final EIR was certified by the Commission and the Agency on January 13, 2000. In June 2000, the planning department prepared an addendum to the EIR analyzing minor Project revisions, and concluded the revisions would not alter the EIR's previous conclusions.

On August 15, 2000, the Agency adopted CEQA findings and a statement of overriding considerations, determined the Project site was physically and economically blighted under the Community

Redevelopment Law (Health & Saf. Code, § 33000 et seq.), and approved the Yerba Buena Center Redevelopment Plan amendment expanding the redevelopment area to include the Project site. The Agency recommended that the Board approve the Project. Two days later, the Commission similarly adopted CEQA findings and a statement of overriding considerations, based on the final EIR, the addendum thereto, planning department staff reports, public comments, and reports and studies on the Project. In addition, the Commission determined the Project would be consistent with the General Plan and its priority policies, and recommended that the Board approve the Project.

Finally, on September 25, 2000, after considering the entire administrative record including the final EIR, the addendum thereto, the economic analyses, reports and studies of the Project, the Agency and Commission determinations, written comments and letters from the public and hours of testimony for and against the Project, the Board certified the final EIR and adopted CEQA findings and a statement of overriding considerations for the Project. Two weeks later the Board, with only one dissenting vote, approved the Project and adopted the Yerba Buena Center Redevelopment Plan amendment expanding the redevelopment area to include the Project site.

Relying on the evidence and analyses in the administrative record, the Board adopted the findings of the Agency and the Commission rejecting Alternatives A through E as infeasible for financial and other reasons, and concluding that the overriding substantial economic, social, public welfare and safety benefits of the Project outweighed its otherwise significant adverse environmental impacts. Among other things, the benefits of the Project included (1) preserving the Emporium Building's most significant architectural and historical features; (2) revitalizing the entire Emporium Site Redevelopment Area; (3) providing over $16 million for affordable housing; (4) providing approximately $14 million per year in projected net tax revenues ***673** to the City; (5) creating approximately 3,400 new jobs; (6) providing $1.25 million for transit improvement measures, $1.5 million for parking solutions in the SOMA area, $250,000 for improvements to the Hallidie Plaza area and $50,000 in open space fees; and (7) creating a publicly accessible rooftop garden. Finally, the Board concluded that demolition of portions of the Emporium Building, as proposed by the Project, would not be inconsistent with the historic preservation policies of the Downtown Plan because a fully rehabilitated Emporium Building would have a negative market value of between negative $2.3 million and negative $5.5 million after taking into account the high costs of rehabilitation and the difficulty of using the antiquated design for modern department store purposes.

The City filed a notice of determination of project approval on October 23, 2000. Appellants filed a petition for writ of mandate and complaint to invalidate the amendment to the redevelopment plan on November 22, 2000, and an amended petition on December 19, 2000. Following two hearings on the amended petition on May 17 and 31, 2001, the trial court denied the petition in its entirety and granted judgment of validation in favor of the City and the Agency. This appeal timely followed entry of judgment.

Scope and Standard of Review

The petition for writ of administrative mandamus in this case broadly challenged the actions taken by the City, the Board and the responsible City agencies with respect to three distinct issues. First, appellants challenged the Project's compliance and consistency with the City's General Plan. Second, appellants challenged the EIR's compliance with CEQA and the City's certification of the Project EIR. Third, appellants contended the City's approval of the amendments to the Yerba Buena Center Redevelopment Plan to include and accommodate the Emporium Site Redevelopment Area was in violation of the Community Redevelopment Law

Health & Saf. Code, § 33000 et seq.). Appellants repeat these arguments on appeal from the trial court's judgment denying their petition.

(1) The inquiry for the issuance of a writ of administrative mandamus is whether the agency in question prejudicially abused its discretion; that is, whether the agency action was arbitrary, capricious, in excess of its jurisdiction, entirely lacking in evidentiary support, or without reasonable or rational basis as a matter of law. (Code Civ. Proc., § 1094.5, subds. (b), (c); *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 10-12[78 Cal.Rptr.2d 1, 960 P.2d 1031]; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132-1133***674**[26 Cal.Rptr.2d 231, 864 P.2d 502]; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 712, 717[29 Cal.Rptr.2d 182](*Sequoyah Hills*);*Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 992[21 Cal.Rptr.2d 803](*Corona-Norco*).) A prejudicial abuse of discretion is established if the agency has not proceeded in a manner required by law, if its decision is not supported by findings, or if its findings are not supported by substantial evidence in the record. We may neither substitute our views for those of the agency whose determination is being reviewed, nor reweigh conflicting evidence presented to that body. (Pub. Resources Code, § 21168.5; Code Civ. Proc., § 1094.5, subd. (b); *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 567-569[38 Cal.Rptr.2d 139, 888 P.2d 1268](*Western States*);*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564[276 Cal.Rptr. 410, 801 P.2d 1161](*Goleta Valley II*);*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392, fn. 5[253 Cal.Rptr. 426, 764 P.2d 278](*Laurel Heights I*);*Sequoyah Hills, supra,* 23 Cal.App.4th at pp. 712, 717;*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 95-96[212 Cal.Rptr. 273].)

On appeal, we are governed by the same abuse of discretion standard in pursuing essentially the same task as that of the trial court. Like the trial court, we review the agency's actions and decisions to determine whether they were in compliance with the procedures required by law and were supported by findings which themselves were supported by substantial evidence in light of the entire administrative record. In so doing, our review is de novo, and not bound by the trial court's conclusions. The decisions of the agency are nevertheless given substantial deference and presumed correct. The parties seeking mandamus bear the burden of proving otherwise, and the reviewing court must resolve reasonable doubts in favor of the administrative findings and determination. (Pub. Resources Code, § 21167.3; *Laurel Heights I, supra,* 47 Cal.3d at p. 393;*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 116-117[104 Cal.Rptr.2d 326](*Save Our Peninsula*);*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 523[98 Cal.Rptr.2d 334](*Friends of Mammoth*);*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 113-114[62 Cal.Rptr.2d 612]; *Sequoyah Hills, supra,* 23 Cal.App.4th at pp. 712, 717;*State of California v. Superior Court* (1990) 222 Cal.App.3d 1416, 1419[272 Cal.Rptr. 472]; *Concerned Citizens of Calaveras County v. Board of Supervisors, supra,* 166 Cal.App.3d at p. 96.)***675**

In the context of an administrative mandamus action challenging an agency's determination under CEQA or the applicable general plan, "substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Cal. Code Regs., tit. 14, § 15384, subd. (a); *Laurel Heights I, supra*, 47 Cal.3d at p. 393.)Such substantial evidence may include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, but not argument, speculation, unsubstantiated opinion, or clearly erroneous evidence. (Pub. Resources Code,

§§ 21080, subd. (e), 21082.2, subd. (c).) (2) Similarly, in reviewing an agency's adoption of a redevelopment plan or amendment under the Community Redevelopment Law, we must determine whether substantial evidence in the administrative record supports the agency's specific findings of urbanization and blight. (Health & Saf. Code, §§ 33030, 33031, 33320.1; *Friends of Mammoth, supra,* 82 Cal.App.4th at p. 538;*Morgan v. Community Redevelopment Agency* (1991) 231 Cal.App.3d 243, 257[284 Cal.Rptr. 745](*Morgan*).)

Consistency with the General Plan

(3a) Appellants first contend that the City's approval of the Project and redevelopment plan amendments was irreconcilably inconsistent with the San Francisco General Plan. At issue are mandatory provisions of the Downtown Plan specifically requiring retention and preservation of the "highest quality buildings," defined in the Downtown Plan as "Significant Buildings," or "[t]hose buildings of the highest architectural and environmental importance-buildings whose demolition would constitute an irreplaceable loss to the quality and character of downtown." These Significant Buildings, which "would be required to be retained," are in turn divided into two classifications, category I and category II, with somewhat more substantial alteration of the latter permitted than of the former. Demolition of a Significant Building "would be permitted only if public safety requires it or, in taking into account the value of TDR [transferable development rights], FN6 the Building retains no substantial remaining market value." FN7Under the Planning Code, the Emporium Building is classified at the highest level as a ***676** category I Significant Building. Like the Downtown Plan, the Planning Code provides that a category I building may not be demolished unless it is determined that, taking into account the value of transferable development rights and costs of rehabilitation, "the property retains no substantial remaining market value or reasonable use." FN8(Planning Code, § 1112.7.) ***677**

FN6 Intended as an incentive for historical preservation, TDR's are a means whereby the owners of historic properties may offset some of the costs of historic preservation and restoration by selling their rights to demolish those properties, thereby transferring such unused development rights to other property owners who can then use those rights to increase the development potential of other less historically significant properties. (Planning Code, §§ 128, 1109.)

FN7 Under the heading "Preserving the Past," the Downtown Plan states the objective (Objective 12) of "conserv[ing] resources that provide continuity with San Francisco's past." To achieve this objective, the Downtown Plan sets out three polices: (1) to "[p]reserve notable landmarks and areas of historic, architectural, or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development"; (2) to "[u]se care in remodeling significant older buildings to enhance rather than weaken their original character"; and (3) to "[d]esign new buildings to respect the character of older development nearby."
As "Key Implementing Action" to carry out these policies, the Downtown Plan sets out the following: "Require retention of the highest quality buildings and preservation of their significant features. Provide incentives for retention of other highly rated buildings, and encourage retention of their significant features."
In pertinent part, the Downtown Plan discusses "Significant Buildings" as follows: "Those buildings of the highest architectural and environmental importance-buildings whose demolition would constitute an irreplaceable loss to the quality and character of downtown-would be required to be retained. There are 251 of these buildings.

They include all buildings classified as Buildings of Individual Importance and rated as excellent in architectural design, or very good in both architectural design and relationship to the environment. [¶] These buildings-referred to in the Plan as Significant Buildings-are divided into Category I and Category II, the difference being in the extent of alteration allowed. There are 209 significant buildings in Category I and 42 significant buildings in Category II. [¶] Significant buildings in Category II can accommodate, because of their depth, more substantial alteration of the back of the building without affecting the building's architectural qualities or appearance or their ability to function as separate structures. Most of these buildings are on deep interior lots with non-architecturally treated side and rear walls. The alteration could be a rear addition to the building visible from the street, a new, taller building cantilevered over the back of the building, or replacement of the rear of the building with a separate, taller structure.... [¶] Demolition of a Significant Building would be permitted only if public safety requires it or, in taking into account the value of TDR, the Building retains no substantial remaining market value. [¶] Changes in the facade, or significant exterior features or interior features designated as landmarks would be reviewed for their consistency with the architectural character of the building by applying criteria, based in part on the Secretary of the Interior's Standards for Rehabilitation. [¶] Owners of significant buildings would be required to comply with all applicable codes, laws and regulations governing the maintenance of property in order to preserve the buildings from deliberate or inadvertent neglect."

FN8 Article 11 of the Planning Code is intended to maintain buildings and areas "of special architectural, historical and aesthetic character" within the C-3 (downtown) district of San Francisco. Section 1103.1 designates the Kearny-Market-Mason-Sutter Conservation District, in which the Emporium Building is located. The Emporium Building is listed as a category I Significant Building in the C-3 district. The Planning Code goes on in section 1111.6 thereof to set strict guidelines and standards for reviewing any proposed alterations to category I Significant Buildings. Among other things, these rules require that any alterations be consistent with the existing architectural character of the building, and prohibit the damaging or destroying of "[t]he distinguishing original qualities or character of the building."
The Planning Code lists the Emporium Building as a category I Significant Building, and provides that the demolition of a category I may not be approved unless "(1) it is determined that under the designation, taking into account the value of Transferable Development Rights and costs of rehabilitation to meet the requirements of the Building Code or other City, State or federal laws, the property retains no substantial remaining market value or reasonable use; or (2) the Superintendent of the Bureau of Building Inspection or the Chief of the Bureau of Fire Prevention and Public Safety determines, after consultation, to the extent feasible, with the Department of City Planning, that an imminent safety hazard exists and that demolition of the structure is the only feasible means to secure the public safety." (Planning Code, § 1112.7.) On the other hand, the Planning Code does *not* list the Emporium Building or any of the other buildings on the Project site as historical landmarks.

Although the City adopted many amendments to the General Plan regarding the Emporium Site Redevelopment Area to enable the Project to proceed despite its apparent inconsistency with the General Plan and the Planning Code, it did not amend the Downtown Plan's requirement that there be no demolition of category I buildings unless required by public safety, or upon a finding of "no substantial remaining market value." Appellants insist that the Project remains unlawfully inconsistent with the San Francisco General Plan's protection for downtown historic resources, claiming that respondents failed to provide a sufficient basis for the essential determination that the Emporium Building had no substantial remaining market value.

(4) The standard for judicial review of administrative decisions by local public agencies with respect to consistency with applicable general plans "is whether the local adopting agency has acted arbitrarily, capriciously, or without evidentiary basis." (*Concerned Citizens of Calaveras County v. Board of Supervisors, supra,* 166 Cal.App.3d at p. 96.) FN9"A city's findings that [a] project is consistent with its general plan can be reversed only if [they are] based on evidence from which no reasonable person could have reached the same conclusion. [Citation.]" (*A Local & Regional Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 648[20 Cal.Rptr.2d 228].) Moreover, because the question of substantial compliance with the general plan is one of law, this court need not give deference to the conclusion of the trial court. (*Concerned Citizens of Calaveras County v. Board of Supervisors, supra,* 166 Cal.App.3d at p. 96;*Twain Harte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 671, 674[188 Cal.Rptr. 233].)

FN9 A public agency's determination that a project is consistent with its general plan "comes to this court with a strong presumption of regularity. [Citation.] To overcome that presumption, an abuse of discretion must be shown. [Citations.] An abuse of discretion is established only if the [agency] has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. (Code Civ. Proc., § 1094.5, subd. (b).) We may neither substitute our view for that of the [agency], nor reweigh conflicting evidence presented to that body. [Citation.]" (*Sequoyah Hills, supra,* 23 Cal.App.4th at p. 717.)

On the other hand, courts accord great deference to a local governmental agency's determination of consistency with its own general plan, recognizing that "the body which adopted the general plan policies in its legislative ***678** capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citations.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. [Citations.] A reviewing court's role 'is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.' [Citation.]" (*Save Our Peninsula, supra,* 87 Cal.App.4th at p. 142.)

Moreover, state law does not require precise conformity of a proposed project with the land use designation for a site, or an exact match between the project and the applicable general plan. (*Sequoyah Hills, supra,* 23 Cal.App.4th at p. 717;*Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 406-407[200 Cal.Rptr. 237].) Instead, a finding of consistency requires only that the proposed project be "*compatible* with the objectives, policies, general land uses, and programs specified in" the applicable plan. (Gov. Code, § 66473.5, italics added.) The courts have interpreted this provision as requiring that a project be " 'in agreement or harmony with' " the terms of the applicable plan, not in rigid conformity with every detail thereof. (*Sequoyah Hills, supra,* 23 Cal.App.4th at p. 718;*Greenebaum v. City of Los Angeles, supra,* 153 Cal.App.3d at p. 406;59 Ops.Cal.Atty.Gen. 129, 131 (1976).) FN10

FN10 "Indeed, it is beyond cavil that no project could completely satisfy every policy stated in the [general plan], and that state law does not impose such a requirement. [Citations.] A general plan must try to accommodate a wide range of competing interests-including those of developers, neighboring homeowners, prospective homebuyers, environmentalists, current and prospective business owners, jobseekers, taxpayers, and providers and recipients of all types of city-provided services-and to present a clear and comprehensive set of principles to guide development decisions. Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be 'in harmony' with the policies stated in the plan. [Citation.] It is, emphatically, *not* the role of the courts to micromanage these development decisions. Our function is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies, whether the city officials made appropriate findings on this issue, and whether those findings are supported by substantial evidence. [Citations.]" (*Sequoyah Hills, supra,* 23 Cal.App.4th at pp. 719-720, italics in original.)

(3b) In this case, the Board expressly determined that the Project was consistent with the General Plan, including the Downtown Plan and its priority policies. These include not only historic preservation, but also "space for commerce"; the maintenance and improvement of the City's "position as a prime location for financial, administrative, corporate, and professional activity"; the improvement of the City's "position as the region's prime location for specialized retail trade"; the provision and support, ***679** "within acceptable levels of density," of expanded downtown commercial space; creation of "an urban form for downtown that enhances San Francisco's stature as one of the world's most visually attractive cities"; increased public transit use; and seismic safety. Adopting the conclusions of the Commission and its staff, the Board found the Project consistent with these objectives and policies of the Downtown and General Plans, including specifically the preservation of historic resources. (5) The Board's reading of its own General Plan "comes to this court with a strong presumption of regularity." (*Sequoyah Hills, supra,* 23 Cal.App.4th at p. 717.)In evaluating whether the Board abused its discretion, we are obliged to give its finding of consistency great deference, without substituting our own views for those of the Board, or reweighing conflicting evidence in the record. (*Ibid.*;*Save Our Peninsula, supra,* 87 Cal.App.4th at p. 142.)

(3c) The administrative record shows that in the process of formulating and amending the Project, great efforts were made to preserve the most significant historical aspects of the Emporium Building. Thus, the historic facade and office portion facing Market Street, as well as the large rotunda and dome are to be preserved and indeed restored. To this extent, therefore, the proposed Project made significant efforts to satisfy the preservation policies of the Downtown Plan as well as the sometimes conflicting policies favoring the development of financially viable commercial and retail space.

Nevertheless, in order to provide a financially viable space for the new Bloomingdale's store, the Project proposed by the Real Parties envisions demolishing a significant portion of the original Building. As the EIR itself recognizes, this "demolition of most of the building and alteration of other architectural elements would constitute a significant adverse impact" of the Project. Because the Downtown Plan permits demolition of historically significant buildings only if public safety requires it or if the building retains no substantial remaining market value, and because neither respondents nor Real Parties contend that demolition of the present Emporium Building is necessary for public safety, the proposed Project can only be construed as consistent with the General Plan if the Building itself retains no substantial remaining market value. The issue presented here is therefore whether the City's findings and determination approving the Project were supported by substantial evidence that the Emporium Building in fact has no substantial remaining market value.

In making this determination, the City relied on the expert analyses of Sedway and KMA. Each consultant independently concluded that, even after taking into account all possible monetary incentives for historic preservation, the substantial costs of rehabilitating and preserving the Emporium ***680** Building would be millions of dollars more than the value the Building could thereafter generate in its existing configuration, through any plausible revenue-producing usage, whether retail, office or residential. Under these circumstances, the Building has no remaining market value.

In coming to this conclusion, Sedway examined five different development alternatives involving preservation of the historic Emporium Building: (1) the "Mostly Retail Scenario," in which the Emporium Building would be historically renovated primarily for retail usage and some office space; (2) the "Mostly Office Scenario," in which the Building would be historically renovated primarily for office space and some retail use on the first two floors; (3) historical renovation of the Building for residential use only; (4) historical renovation of the Building for use as a single large upscale department store; and (5) historical renovation of the Building for use as a single large retail store focusing on household goods, such as Target or Kmart. Sedway performed detailed economic analysis only on the first two of these scenarios after initial consideration led to the conclusion the last three were infeasible from both a financial and a market perspective. FN11

FN11 Sedway's report nevertheless discussed these three rejected development options at some length to explain the reasons for rejecting them. The all-residential conversion option was rejected for legal, practical and market feasibility reasons because of the impossibility of providing all the residential units with windows and the difficulty of providing any parking facility in the existing Building. The single department store option was rejected because of the decrease in the number of large upscale department stores nationwide, the absence of any such stores seeking buildings as large as the Emporium Building, the marketplace reality that department stores typically seek "anchor" status locations in multiretail shopping centers in order to leverage financial benefits therefrom, and the difficulty of obtaining sufficient retail sales to justify the cost of occupying such a large space. The single large housewares store option was rejected for similar reasons, and because such a use would be inappropriate for the Building.

Sedway's comprehensive analysis of the two remaining alternatives subtracted the estimated development costs from the estimated value of the historically rehabilitated Building under either scenario, taking into account all projected costs of rehabilitation, the probable future revenue stream from the completed development, and the available monetary incentives for historic restoration and preservation, including potential historic tax credits and TDR's associated with the property in the Emporium Site Redevelopment Area. Under either alternative, Sedway concluded that the developer would incur approximately $130 million in construction costs. Against this, Sedway weighed the value of the rehabilitated Building, based on the capitalized value of future net operating income plus available TDR's and historic tax credits. Complete rehabilitation of the Emporium Building in accordance with accepted standards of historic preservation and modern seismic safety ***681** codes would leave in place all the inefficient and obsolete aspects of the Building's design and configuration, resulting in serious limitations on feasible space utilization and a consequent reduction in potential rental income. Sedway estimated the value of the future income stream from either potential development alternative at approximately $104.5 million. Even factoring in an additional total of approximately $23 million in the value of TDR's and historic preservation tax credits, and assuming the land and existing Building were available for free, the costs of rehabilitation, development and operation would therefore exceed any anticipated future revenue stream by $2.3 million to $5.5 million. Thus, under any historic preservation scenario, the Emporium Building would necessarily have a net *negative* value of several million dollars. Because the cost of rehabilitation would exceed the projected value of the rehabilitated asset, Sedway concluded the existing historic Building had no substantial remaining market value.

Sedway's report, analysis, and conclusions were independently verified and confirmed by KMA, the City's independent real estate valuation expert. Specifically, KMA reported that: (1) the "investment methodology fundamental to [Sedway's analysis] is the method commonly utilized in the industry and well accepted as a way to identify the residual value, if any, for the Emporium Building"; (2) it had consulted with the city architect to validate the cost data utilized in the Sedway report; (3) it had met with representatives of the construction and development industries to discuss the proposed Project; and (4) it had reviewed "independent information available as to key factors of this project" including retail industry trends, development costs, and market changes. After conducting this review, KMA independently concluded that "the analysis, conclusions and underlying assumptions in the Sedway report are reasonable," and "the Emporium Building property retains no substantial remaining market value." The City Architect also conducted an independent review of Sedway's report and analysis, and verified its estimates of construction costs. Finally, the City Planning Commission reviewed the report and also concluded the Project was consistent with the Downtown Plan.

Significantly, appellants are unable to point to *any* contrary economic evidence in the entire administrative record. Even if they had done so, however, the City's finding of no substantial remaining market value would still have to be affirmed. The conclusions and opinions of the two real estate valuation experts, Sedway and KMA, constitute substantial evidence in support of the City's administrative findings and determination that the Emporium Building retains no substantial remaining market value. (*Lewis v. Seventeenth Dist. Agricultural Assn.* (1985) 165 Cal.App.3d 823, 831***682**[211 Cal.Rptr. 884] [agency "may use the opinion evidence of experts as substantial evidence on which to base such a decision"]; *Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, 532[127 Cal.Rptr. 775] ["opinion evidence of experts ... is substantial evidence upon which ... administrative decision may be based"].)

(6a) In default of having produced any evidence to contradict the opinions of the experts, appellants instead argue that the expert analyses of Sedway and KMA should be disregarded for a variety of procedural reasons. None of appellants' proffered arguments withstands analysis.

Appellant' principal contention is that the economic analysis produced by Sedway and KMA was inadequate, untrustworthy and insufficient to support the City's Project approval because it allegedly did not contain all the information required by article 11 of the San Francisco Planning Code for a permit application to demolish an historic category I building. Specifically, appellants contend that any analysis of whether a given property retains any substantial remaining market value must take into account the dozen or so prescribed factors enumerated in sections 1112.1 and 1112.7 of the Planning Code. [FN12] These include among other things the purchase price of the property, the date of purchase, the most recent assessed value, real estate taxes, annual ***683** debt service, operating and maintenance expenses, recent appraisals, studies or bids for profitable and adaptive uses of the property, and available TDR's. The ultimate calculation of market value is then referred for decision to the Commission and the City Landmarks Board. (Planning Code, §§ 1112.1, 1112.5 to 1112.7.) Because neither Sedway nor KMA used or considered all the factors enumerated in the Planning Code, appellants contend the City failed properly to determine the actual market value of the Building, which therefore cannot be exempted from the provisions of the Downtown and General Plans.

FN12 Planning Code section 1112.1 provides in pertinent part as follows: "Applications for a permit to demolish any Significant ... Building or any building in a Conservation District shall comply with the provisions of Section 1006. 1 of Article 10 of this Code [setting forth technical procedural requirements for filing applications for certificate of appropriateness with the Department of City Planning].
"In addition to the contents specified for applications in Section 1006.1 of Article 10, any application for a permit to demolish a Significant Building ... on the grounds stated in Section 1112.7(a)(1), shall contain the following information:
"(a) For all property:
"(1) The amount paid for the property;
"(2) The date of purchase, the party from whom purchased, and a description of the business or family relationship, if any, between the owner and the person from whom the property was purchased;
"(3) The cost of any improvements since purchase by the applicant and date in- curred;
"(4) The assessed value of the land, and improvements thereon, according to the most recent assessments;
"(5) Real estate taxes for the previous two years;
"(6) Annual debt service, if any, for the previous two years;
"(7) All appraisals obtained within the previous five years by the owner or applicant in connection with his or her purchase, financing or ownership of the property;
"(8) Any listing of the property for sale or rent, price asked and offers received, if any;
"(9) Any consideration by the owner for profitable and adaptive uses for the property, including renovation studies, plans, and bids, if any; and
"(b) For income-producing property:
"(1) Annual gross income from the property for the previous four years;
"(2) Itemized operating and maintenance expenses for the previous four years;
"(3) Annual cash flow for the previous four years.
"Applications for the demolition of any Significant ... Building shall also contain a description of any Transferable Development Rights or the right to such rights which have been transferred from the property, a statement of the quantity of such rights and untransferred rights remaining, the amount received for rights transferred, the transferee, and a copy of each document effecting a transfer of such rights."
Planning Code section 1112.7 provides in pertinent part as follows: "The Board of Permit Appeals, the City Planning Commission, the Director of Planning, and the Landmarks Board shall follow the standards in this Section in their review of applications for a permit to demolish any Significant ... Building from which [TDR's] have been transferred.
"No demolition permit may be approved unless: (1) it is determined that under the designation, taking into account the value of [TDR's] and costs of rehabilitation to meet the requirements of the Building Code or other City, State or federal laws, the property retains no substantial remain-

> ing market value or reasonable use; or (2) the Superintendent of the Bureau of Building Inspection or the Chief of the Bureau of Fire Prevention and Public Safety determines, after consultation, to the extent feasible, with the Department of City Planning, that an imminent safety hazard exists and that demolition of the structure is the only feasible means to secure the public safety. Costs of rehabilitation necessitated by alterations made in violation of Section 1110, by demolition in violation of Section 1112, or by failure to maintain the property in violation of Section 1117, may not be included in the calculation of rehabilitation costs under Subsection (1)."

Appellants' argument founders on their own admission that the provisions of the Planning Code do not apply to this redevelopment project. Only if we set aside the City's finding of blight and determine that the Project was approved in violation of the Community Redevelopment Law would the provisions of the Planning Code become pertinent to this case. Neither does the Downtown Plan incorporate article 11 of the Planning Code. Thus, the provisions of the Planning Code are essentially irrelevant to the validity of the City's approval of the subject Project.

Even if the Planning Code did apply, its provisions do not set out any method, much less an exclusive method, for *evaluating* commercial properties proposed for demolition or redevelopment. The relevant provisions of the Planning Code simply require that certain information be provided in any application for a demolition permit; they do not provide any guidance on how the City is to weigh and analyze the information provided. The only ***684** requirement stated by the Planning Code with respect to the question of whether to approve demolition of a Significant Building is the same as that set out in the Downtown Plan, namely, whether, "taking into account the value of [TDR's] and costs of rehabilitation to meet the requirements of the Building Code or other City, State or federal laws, the property retains no substantial remaining market value or reasonable use." (Planning Code, § 1112.7.) This is, of course, the same question addressed in the analyses prepared by Sedway and KMA, and used by the City in making its ultimate determination to approve the Project. This standard for demolition was satisfied by the findings of both the Sedway and KMA reports.

Appellants nevertheless contend Sedway's report cannot constitute substantial evidence because, rather than providing objective analysis, Sedway instead was a paid consultant hired by Real Parties to produce a biased, self-serving study aimed at a predetermined result. This assertion is meritless. The courts have specifically rejected similar assertions that decisions of public agencies are tainted by input from economic analysts and experts retained by the interested parties. (*City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037, 1042[202 Cal.Rptr. 366] [rejecting CEQA challenge to EIR principally prepared by developer, where record showed the city exercised independent judgment before approving project]; *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893, 908[165 Cal.Rptr. 401] [EIR not fatally undermined by direct participation of developer and paid experts in underlying studies and analysis].) In this case, KMA and the city architect both provided an independent review and corroboration of Sedway's analysis. Together, their reports constituted substantial evidence in support of the City's ultimate decision that the Emporium Building retained no substantial remaining market value and approval of the project was therefore consistent with the General Plan.

Alternatively, appellants assert that Sedway could not accurately estimate the value of the Emporium Building without actually putting it on the market. The approach utilized by Sedway employed established, widely-accepted methodologies for valuation of real estate in compliance with commonly accepted commercial real estate appraisal practice recognized by the American Institute of Real Estate Appraisers and the courts. (*De Luz Homes, Inc. v. County of San Diego* (1955) 45 Cal.2d 546, 564-568[290 P.2d 544]; American Inst. Real Estate Appraisers, The Appraisal of Real Estate (11th ed. 1996) 449, 453-454.) The market value of commercial properties that derive their worth from the income they are capable of producing is generally calculated by means of the income capitalization approach, an appraisal technique that recognizes that buyers invest in income-producing ***685** properties with the expectation of receiving a return on their investment. The appraisal method by comparable sales, generally used for estimating the market value of single-family residential property, is not often useful in valuing large commercial properties, where the critical issue is the income the property is capable of producing. Such an approach would be particularly useless in a case such as this, in which the building in question has never been sold and is not currently for sale, and there is no evidence in the record of any comparable properties in the City, much less any such properties that are for sale.

In any event, there is nothing unusual in Sedway's analysis or conclusions. As many cases have witnessed, it is well established that impaired property may have little or no market value if the costs of necessary repairs, remediation or rehabilitation would approximate or exceed the value of the property in its repaired or rehabilitated condition. (*Mola Development Corp. v. Orange County Assessment Appeals Bd.* (2000) 80 Cal.App.4th 309, 318-320[95 Cal.Rptr.2d 546]; *Westling v. County of Mille Lacs* (Minn. 1996) 543 N.W.2d 91, 92-93;*Commerce Holding Corp. v. Assessors of Babylon* (1996) 88 N.Y.2d 724, 728-732 & fn. 5 [649 N.Y.S.2d 932, 673 N.E.2d 127].)

Appellants also suggest that the Sedway report must be rejected as inadequate because it only analyzed two hypothetical commercial project alternatives. This suggestion is baseless. Sedway initially identified five potential uses of the Building in an historically rehabilitated state. Three of these alternatives were then ruled out, on the basis of Sedway's preliminary analysis finding them entirely infeasible for practical, financial and market reasons. It then concentrated its analysis on the two remaining preservation scenarios that might actually be economically viable. After conducting a comprehensive analysis of these two potentially viable alternatives, Sedway determined that neither resulted in any remaining market value for the Building. KMA validated Sedway's analysis and conclusions.

Finally, in their briefs on this appeal appellants offer their own attempted analysis of the Emporium Building's market value in an effort to prove that the Building retains some value after deducting the projected costs of rehabilitation and refurbishment. Their suggested approach is to subtract projected rehabilitation costs from the *appraisedvalue* of the Emporium Building, *and the land on which it stands*, at some undisclosed point in time. There are numerous difficulties with this argument.

First, it is substantively faulty. The Downtown Plan asks only whether the Significant Building proposed for demolition, *not* the building and land together, has any remaining market value. ***686**

Second, assessed value is very different from market value. The former is figured as of some base year, and is then arbitrarily augmented each year by a given percentage of the prior year's assessed value. (Rev. & Tax. Code, § 51.)Over time, assessed value and market value may diverge substantially, depending on market fluctuations and the depreciation of improvements to the property. Moreover, unlike fair market value, assessed value of a commercial building such as the Emporium Building does not have to make any assumptions as to whether the Building will be rehabilitated and preserved as opposed to demolished and replaced. Appellants' assertion that market value can be obtained simply by subtracting rehabilitation costs from assessed value has no foundation or support in the field of commercial real estate valuation. The relevant questions instead are: (1) what will it cost to turn an unoccupied, run-down commercial property into a revenue-generating income property; and (2) will the revenue projected to be generated from the rehabilitated property justify the required investment? These are the questions addressed by Sedway, KMA, the city architect, the Commission, and the Board in their respective determinations that no historic rehabilitation of the Emporium Building could generate a revenue stream sufficient to cover the cost of such rehabilitation. Because they do not care for this answer, appellants have simply chosen to avoid posing these questions.

Third, appellants give no explanation for their rehabilitation cost estimate of $77 million, which arbitrarily excludes approximately $53 million in various items of expense identified by both Sedway and KMA. These excluded items include such things as design costs, permits, insurance, property taxes, and costs of making tenant improvements. There is no explanation offered for these missing costs, the ignoring of which conveniently permits appellants to posit a rehabilitation expense less than their assumed "appraised value" of the Emporium Building and property.

Finally, and perhaps most importantly, appellants never presented their proposed analysis at any point during the multiyear preapproval administrative process below. They may therefore be said to have waived this argument altogether. (7) Exhaustion of administrative remedies is a *jurisdictional* prerequisite to a judicial action challenging any planning decision. (*Corona-Norco*, *supra*, 17 Cal.App.4th at p. 993.)If a party wishes to make a particular methodological challenge to a given study relied upon in planning decisions, the challenge must be raised in the course of the administrative proceedings. Otherwise, it cannot be raised in any subsequent judicial proceedings. (*Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1447-1449[35 Cal.Rptr.2d 334] [failure to make timely methodological challenge constitutes waiver, barring such challenge on judicial review].) ***687** (6b) Having failed to present their proposed methodology to the City during the course of the administrative review process, appellants cannot do so now for the first time on appeal.

We conclude that the administrative record contains substantial evidence supporting the City's finding that, as required by the Downtown Plan and General Plan, the Emporium Building retains no substantial remaining market value in its present configuration and condition. We consequently find no abuse of discretion in the City's balancing of the competing policies and objectives set out in the Downtown and General Plans as applied to this Project. The responsible City agencies reasonably determined the Project was consistent with the City's General and Downtown Plans, and did not abuse their discretion or act arbitrarily, capriciously, or without evidentiary basis in approving the Project. We must therefore affirm the decision of the trial court upholding the agency's determination in this respect. (*Sequoyah Hills, supra,* 23 Cal.App.4th at pp. 717-718;*A Local & Regional Monitor v. City of Los Angeles, supra,* 16 Cal.App.4th at p. 648;*Concerned Citizens of Calaveras County v. Board of Supervisors, supra,* 166 Cal.App.3d at p. 96.)

Compliance with CEQA

Appellants' next contention is that the City's approval of the Project was in violation of CEQA because the EIR itself was inadequate and should not have been certified. Appellants base their assertion on three separate grounds: (1) the EIR's failure to include an analysis of the economic feasibility of the project alternatives; (2) the alleged existence of feasible alternatives to the Project as approved; and (3) the alleged insufficiency of the EIR's discussion of traffic and parking impacts and its failure to provide adequate mitigating measures therefor. None of these contentions has merit.

Judicial Review Of EIR Certification

Through the enactment of CEQA, the Legislature sought to protect the environment with the establishment of administrative procedures drafted, among other things, to "[e]nsure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions." (Pub. Resources Code, § 21001, subd. (d); [FN13] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74[118 Cal.Rptr. 34, 529 P.2d 66].) The "heart of CEQA" is the EIR, whose purpose is to inform the public and ***688** government officials of the environmental consequences of decisions before they are made. (*Goleta Valley II, supra,* 52 Cal.3d at p. 564;*Laurel Heights I, supra,* 47 Cal.3d at p. 392;*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1315[8 Cal.Rptr.2d 473].) In general, an EIR must be prepared on any "project" a public agency intends to approve or carry out which "may have a significant effect on the environment." [FN14](§§ 21082.2, subd. (a), 21100, 21151; Guidelines, § 15002, subd. (f); *Sierra Club v. County of Sonoma, supra,* 6 Cal.App.4th at p. 1315.)

FN13 Unless otherwise indicated, all further statutory references are to the Public Resources Code.

FN14 The term "project" is defined broadly to include any activity undertaken directly by or with the support of a public agency, or involving the issuance of a permit, license or other entitlement by a public agency, "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (§ 21065; see also Cal. Code Regs., tit. 14, §§ 15002, subd. (d), 15378, subd. (a) (hereinafter Guidelines).) "The definition encompasses a wide spectrum, ranging from the adoption of a general plan, which is by its nature tentative and subject to change, to activities with a more immediate impact, such as the issuance of a conditional use permit for a site-specific development proposal. [Citations.]" (*Sierra Club v. County of Sonoma, supra,* 6 Cal.App.4th at p. 1315.)

CEQA defines the quantum of evidence constituting substantial evidence as follows: "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (§ 21082.2, subd. (c).) In turn, the CEQA Guidelines set out in the California Code of Regulations define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a).) [FN15]

FN15 "(a) 'Substantial evidence' as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. [¶] (b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (Guidelines, § 15384.)

(8) Judicial review under CEQA is generally limited to the question whether the public agency has

abused its discretion by not proceeding as required by law, or by making a determination not supported by substantial evidence. (§§ 21168, 21168.5; ***689***Sierra Club v. County of Sonoma, supra,* 6 Cal.App.4th at p. 1317.)In our review, we must be careful not to interpret the provisions of either CEQA or the Guidelines "in a manner which imposes procedural or substantive requirements beyond those explicitly stated" in CEQA and its Guidelines. (§ 21083.1) [FN16] Our role in applying this test is identical to that of the trial court. We must independently review the administrative record to determine whether it is free from legal error. Thus, the conclusions of the trial court, and its disposition of the issues in this case, are not conclusive on appeal. (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602-1604 & fn. 3[35 Cal.Rptr.2d 470]; *Sierra Club v. County of Sonoma, supra,* 6 Cal.App.4th at p. 1321;*Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1071, 1076[230 Cal.Rptr. 413]; *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1160[227 Cal.Rptr. 688].)

FN16 Section 21083.1 provides: "It is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines."

Failure To Include Economic Feasibility Analysis

(9) The EIR identified five hypothetical alternatives to the proposed Project, all of which to a greater or lesser degree involved fewer changes to the Emporium Site Redevelopment Area: Alternative A, no project; Alternative B, Reduced Development, the proposed Project minus any hotel tower; Alternative C, Conservative Preservation, preserving and rehabilitating the Emporium Building with new construction allowing for appropriate use of the historic building, and leaving Jessie Street intact; Alternative D, Modified Preservation, preserving more of the historic exterior and interior features of the Emporium Building than the proposed Project, but with more new construction and alterations to the Building than under the more conservative preservation alternative; and Alternative E, Existing Planning Controls, essentially another preservation alternative differing in certain details from the other two, and in full compliance with the City Planning Code and the General Plan. At some length, the EIR then discussed the different environmental impacts associated with these alternatives. Appellants' principal contention is that the EIR was defective because it failed to address the *economic feasibility* of the five alternatives as well.

Appellants' contention is without merit. As is self-evident from its name, an EIR is an *environmental* impact report. As such, it is an informational document, not one that must include ultimate determinations of economic feasibility. CEQA explicitly states that the purpose of an EIR is simply "to ***690** *identify* the significant effects on the environment of a project, to *identify* alternatives to the project, and to *indicate* the manner in which those significant effects can be mitigated or avoided." (§ 21002.1, subd. (a), italics added.) [FN17]Thus, a listing of potential "[a]lternatives to the proposed project" is one of the mandatory elements to be included in an EIR. (§ 21100, subd. (b)(4).) CEQA also provides that the significant adverse effects on the environment identified in the EIR must be mitigated or avoided "whenever it is feasible to do so." (§ 21002.1, subd. (b).) However, nowhere does the statute mandate that the EIR *itself* also contain an analysis of the feasibility of the various project alternatives or mitigation measures that it identifies.

FN17 Section 21002.1 provides in pertinent part as follows: "[T]he Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

"(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

"(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

"(c) If economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations."

To the contrary, CEQA specifically provides that it is *the public agency*, not the EIR, that bears responsibility for making "findings" as to whether "[s]pecific economic, legal, social, technological, or other considerations ... make infeasible the mitigation measures or alternatives identified in the [EIR]," or whether there are "specific overriding economic, legal, social, technological, or other benefits of the project" that "outweigh the significant effects on the environment." (§§ 21002.1, subds. (b), (c), 21081.) FN18Section 21081.5 in turn specifically provides that in making these determinations, "the public agency shall base its findings *on substantial evidence in the record*." (§ 21081.5, italics added.) Thus, although CEQA plainly provides that a reasonable range of alternatives must be included in the EIR, the ***691** statute does *not* require the EIR itself to provide any evidence of the feasibility of those alternatives, much less an economic or cost analysis of the various project alternatives and mitigating measures identified by the EIR. Instead, it *does* require the public *agency* to make findings and determinations as to the feasibility of such alternatives or mitigation measures with respect to each significant environmental impact which the EIR *identifies*, based on substantial evidence set forth anywhere "in the record." In short, there is no statutory basis in the language of CEQA for appellants' contention that the EIR in this case was inadequate and defective because it failed to assess the economic feasibility of the five alternatives which it identified and discussed. We decline appellants' invitation to interpret the explicit statutory language in the manner which they urge on this court, and thereby impose a new procedural and substantive requirement on the preparation of an EIR that is clearly beyond those already prescribed. (§ 21083.1)

FN18 Section 21081 provides: "Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

"(a) The public agency makes one or more of the following findings with respect to each significant effect:

"(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

"(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

"(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

"(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment."

The Guidelines even more explicitly support this interpretation. Section 15131, subdivision (c) of the Guidelines provides that "[e]conomic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. *If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.*" (Italics added.) Similarly, section 15131 of the Guidelines states that "[e]conomic or social information *may* be included in an EIR *or may be presented in whatever form the agency desires.*" (Italics added.)

This court has previously rejected the very argument advanced by appellants in this case. As stated in *Sequoyah Hills, supra,* 23 Cal.App.4th 704: "Appellant also appears to argue that the EIR did not adequately address the issue of economic feasibility of the alternatives to the proposed project. While economic information about a given project may be included in an EIR, it is not required. [Citation.] Although the ultimate decisionmaker is required to consider economic and social factors in making its feasibility findings, the agency may receive such information in whatever form it desires. [Citation.] If the decisionmaker is correct in finding that a given ***692** alternative is infeasible, the EIR will not be deemed inadequate simply because it failed to include an analysis of that alternative. [Citation.]" (*Id.* at p. 715, fn. 3; see also *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1180[243 Cal.Rptr. 339](*Goleta Valley I*) [court examined entire administrative record to determine if county's determination finding environmentally less damaging alternative infeasible was supported by substantial evidence].)

The cases cited and relied upon by appellants are not to the contrary. They concern the separate issue of a public agency's failure to identify a reasonable range of potentially feasible alternatives because the agency claimed to have already made the foundational determination that there were no feasible alternatives *before drafting the EIR.* (*Laurel Heights I, supra,* 47 Cal.3d at pp. 404-407;*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 731, 736[270 Cal.Rptr. 650].) Neither case dealt with or had anything to say concerning the issue of whether the ultimate economic feasibility evidence relied upon by the agency in making its decision *after* certification of the EIR must be contained in the EIR or may instead be set forth elsewhere in the record. FN19 In contrast, here the City did not consider and reject potentially feasible alternatives in a private internal process before drafting the EIR. Instead, the EIR identified five potentially feasible alternatives and then extensively analyzed their environmental impacts.

FN19 In fact, the court in *Kings County Farm Bureau* stated that the agency's obligations would be satisfied once the EIR contained a meaningful discussion of alternatives, and findings were made regarding the feasibility of those alternatives "on the record." (*Kings County Farm Bureau v. City of Hartford, supra*, 221 Cal.App.3d at p. 731.)

Appellants also cite two other cases in which a discussion of economic feasibility happened to be contained in an EIR, as permitted by the CEQA Guidelines. However, neither of these cases held that such feasibility analysis *must* be contained in the EIR. (*City of Fremont v. San Francisco Bay Area Rapid Transit Dist.* (1995) 34 Cal.App.4th 1780[41 Cal.Rptr.2d 157]; *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco, supra,* 106 Cal.App.3d 893.)

In sum, in this case the EIR satisfied CEQA's mandate to identify and discuss a reasonable range of potentially feasible alternatives and compare their environmental impacts with those of the proposed Project. The administrative record then provided ample evidence and analysis of the economic feasibility of these various alternatives as compared to the Project. This evidence and analysis was available to the City, its agencies and the public to evaluate before making the ultimate decision to certify the EIR and approve the Project. CEQA does not require more than this.

Finding Of No Feasible Alternatives

(10) Under CEQA, public agencies are required to consider measures to avoid or mitigate a project's identified adverse environmental impacts, and ***693** adopt them if feasible. (§§ 21002, 21002.1, subds. (b), (c), 21081; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 123[65 Cal.Rptr.2d 580, 939 P.2d 1280].) FN20 Appellants argue that, contrary to the conclusions of the Board, feasible alternatives to the Project do exist. In support of this argument, they cite case law stating that a finding of infeasibility requires not just a showing of greater costs or lost profits, but evidence that the negative financial impact of the alternative would be so severe as to render it "impractical to proceed" with it. (*Goleta Valley I, supra,* 197 Cal.App.3d at p. 1181.) FN21 Insisting that the preservation alternatives identified in the EIR are not impractical, appellants contend that the City was therefore obligated to adopt one of these alternatives instead of the environmentally more damaging Project. Appellants are wrong. The administrative record contains ample substantial evidence to support the Board's finding that the preservation alternatives were infeasible.

FN20 Section 21002 provides: "The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives of feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

FN21 "The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." (*Goleta Valley I, supra,* 197 Cal.App.3d at p. 1181.)

As discussed, the EIR identified and discussed in detail five alternatives to the preferred Project. Sedway then prepared detailed economic analyses of each of these alternatives. KMA in turn reviewed the Sedway report, confirmed its calculations and figures, and concurred in its results. These results showed that in view of the huge costs involved, *any* development of the vacant and rapidly deteriorating Emporium Building and the dilapidated and underutilized buildings along Mission Street would require a significant infusion of public money. The Sedway report calculated the development costs and projected revenue stream for the preferred Project and each preservation alternative in order to determine the return an investor could expect to make and the consequent amount a prudent person might invest given the expected revenue stream. The financial gap between the amount a prudent person would invest on a given project and the required rehabilitation and development costs represented a shortfall that would have to be made up with public investment. The less revenue generated by the selected ***694** alternative, the more public assistance required. Absent such public participation, no prudent person would proceed with any project, and the Emporium Site Redevelopment Area would remain undeveloped.

Sedway's analysis of the various alternatives showed that the more historic preservation required, the higher the costs of rehabilitation and development, and the lower the projected income stream and profitability of the final product. The three preservation alternatives would all have significantly less square footage of commercial space than the proposed Project, with consequent reductions in the amount of commercial income and profit, tax revenues, and job opportunities for the community. These reductions in projected revenue stream necessarily decreased the amount of investment any prudent investor would make, and increased the financial gap between private investment sources and development costs that would have to be filled by public participation and funding.

Thus, Sedway's analysis concluded that Alternative C, the most preservation-oriented option, would require an estimated $82.1 million in public investment to close the financial shortfall between private investment and cost of rehabilitation and development. Alternative D, the modified preservation alternative with less of the original architectural elements of the Emporium preserved and more modern construction, would still require an estimated $59.5 million in public participation. Alternative E, the so-called "Existing Planning Controls" option, would require public funding in the amount of an estimated $78.3 million. In contrast, the Project approved by the City required only $27 million in public participation, and was the only alternative for which the entire public investment could be covered by the City's portion of the increased tax revenues generated by the Project itself. [FN22]

KMA concurred with Sedway's report. It found independently that "the EIR alternatives are not financially feasible without public assistance and that the assistance is minimized by the Preferred Alternative [the Project]."

> FN22 The least expensive alternative, not considered at all, would be to demolish the Building and develop the property from scratch. Alternative A, the "No Project" alternative, would obviously not involve any investment, public or private. However, it would leave the subject area essentially abandoned, and generate none of the economic redevelopment needed in the area. Alternative B, the "Reduced Development" alternative, essentially is the preferred Project minus a hotel tower; it is not a preservation alternative at all, and for this reason presumably uninteresting to appellants. In any event, it would generate significantly less commercial and tax revenue than the preferred Project because of the absence of the hotel, and would consequently require more public investment.

Significantly, appellants do not identify which of the several preservation alternatives would be feasible. Nor do they point to any evidence in the ***695** record to contradict the strong evidence of infeasibility. [FN23] They simply argue that *some* preservation alternative with less adverse environmental impact than the preferred Project should have been adopted. Contrary to appellants' apparent assumption, CEQA does not require that an agency select the alternative course most protective of the environmental status quo. (*Laurel Heights I, supra,* 47 Cal.3d at p. 393 [" 'CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations' "]); *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco, supra,* 106 Cal.App.3d at p. 913 ["The statute, however, does not require the Board to reach a conclusion in favor of environmental values in each instance"].)

CEQA's only purpose is to guarantee that the public and the agencies of the government will be *informed* of environmental impacts, that they will *consider* those impacts before acting, and that insofar as practically possible, *feasible* alternatives and mitigation measures will be adopted to lessen or avoid adverse environmental impacts.

FN23 The only "evidence" cited by appellants consists of a claim by one lay witness that Sedway underestimated the current market value of commercial rent per square foot, and opinion statements by another such witness that some tenant other than Bloomingdale's could be found for a rehabilitated and preserved Emporium Building. Aside from the speculative and conjectural nature of this purported evidence, the City was not required to disregard the extensive contrary expert opinion evidence in the record in making its decision on the feasibility of project alternatives. (*Laurel Heights I, supra,* 47 Cal.3d at p. 393.)

The record shows these purposes of CEQA were met in this case. The City and its agencies made every effort to mitigate the environmental impacts of the Project as much as possible, requiring numerous changes and amendments that ultimately resulted in a proposal that preserves the most significant architectural and historic elements of the Emporium Building while revitalizing a major downtown area at a cost the City could afford. We conclude that there was substantial evidence in the administrative record to support the decision of the Board finding that the proposed preservation alternatives to the Project were infeasible, in that the additional costs and lost profitability they would entail were sufficiently severe as to render them impractical. (*Goleta Valley I, supra,* 197 Cal.App.3d at p. 1181.)Neither the City nor any of the responsible agencies abused their discretion in approving the Project as the only alternative proposed that was feasible and practical.

Adequacy Of Discussion Of Parking Impacts And Mitigation

(11a) Appellants' final challenge to the adequacy of the EIR focuses on mitigation of traffic and parking impacts. They contend that the EIR shows the Project will have significant impacts in the form of increased gridlock ***696** and traffic pressure and the demand for at least 1,250 new parking spaces, yet fails to identify or propose any mitigating measures for these impacts. On this basis, appellants argue the City's certification of the EIR must be overturned, and the matter remanded with orders that the EIR be supplemented to include analysis of the environmental impacts caused by increased traffic and demand for parking.

The EIR discussed potential traffic impacts and parking shortfalls in detail, considering existing conditions, cumulative development conditions in 2015, and projected interim conditions in 2003. It concluded the Project would result in immediate impacts on traffic congestion at two intersections in the vicinity, and cumulative impacts over time in the SOMA area. In addition, it concluded that the parking demand generated by the Project would result in 95 percent occupancy of available spaces in the vicinity generally, and 100 percent occupancy during peak holiday periods and major events at the neighboring Moscone Convention Center. By 2015, the parking demand in the Project area would exceed capacity due to cumulative development.

(12) With regard to the discussion of mitigation measures, an EIR need not be exhaustive or perfect; it is simply required to "describe feasible measures which could minimize significant adverse impacts." (Guidelines, § 15126.4, subd. (a)(1); Pub. Resources Code, § 21100, subd. (b)(3).) We review the EIR's discussion of mitigation measures by the traditional substantial evidence standard. It is not our task to determine whether adverse effects could be better mitigated. (*Laurel Heights I, supra,* 47 Cal.3d at pp. 392-393;*Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.*

(1994) 24 Cal.App.4th 826, 843[29 Cal.Rptr.2d 492].)

(11b) Here, the EIR identified specific mitigation measures to reduce the significant traffic impacts of the Project, including adjustment of traffic signal timing, alteration of traffic lines at intersections expected to experience traffic congestion impacts, and development and implementation of public transit incentive programs for Project employees and patrons. The EIR concluded the mitigation measures identified would significantly reduce the adverse traffic impacts. The EIR's analysis of traffic impacts and identification of mitigating measures was clearly sufficient and supported by substantial evidence. (See *Save Our Peninsula, supra,* 87 Cal.App.4th at pp. 137-139.)

With regard to adverse impacts on parking availability, the EIR noted that the Project site is located at a transit hub served by BART, 25 MUNI bus lines, five MUNI metro lines, cable car lines, Golden Gate Transit, AC ***697** Transit, Caltrain and SamTrans; and it specifically pointed out that providing additional off-street parking would result in the adverse environmental impact of attracting more cars to the area, in conflict with the City's charter policy to encourage the use of public transit first and discourage the use of private automobiles in areas "well served by public transit." (S.F. Charter, § 16.102(7).) To mitigate the secondary *environmental* impacts of increased demand for parking, the EIR suggested reducing the number of monthly spaces rented at the neighboring City public parking garage at Fifth and Mission Streets to increase the number of available short-term spaces; proposed various traffic-related measures to mitigate increased congestion; and noted that City agencies were concurrently undertaking feasibility studies for the expansion of the Fifth and Mission garage.

(13) Contrary to appellants' apparent assumption, there is no statutory or case authority requiring an EIR to identify specific measures to provide additional parking spaces in order to meet an anticipated shortfall in parking availability. The social inconvenience of having to hunt for scarce parking spaces is not an environmental impact; the secondary effect of scarce parking on traffic and air quality *is.* Under CEQA, a project's social impacts need not be treated as significant impacts on the environment. An EIR need only address the *secondary physical* impacts that could be triggered by a social impact. (Guidelines, § 15131, subd. (a).)

(11c) Thus, the EIR correctly concluded that "[p]arking shortfalls relative to demand are not considered significant environmental impacts in the urban context of San Francisco. Parking deficits are an inconvenience to drivers, but not a significant *physical* impact *on the environment.*" (Italics added.) The EIR then fulfilled its CEQA-mandated purpose by identifying ways in which the secondary *environmental* impacts *resulting from* the projected parking deficits could be mitigated, in keeping with the specific environmental strictures imposed by the City's own transit-first policy. It is not our place to reweigh the evidence or impose our opinion that the identified adverse effects could be better mitigated than as suggested in the EIR. (*Laurel Heights I, supra,* 47 Cal.3d at pp. 392-393;*Save Our Peninsula, supra,* 87 Cal.App.4th at pp. 137-139;*Sequoyah Hills, supra,* 23 Cal.App.4th at p. 717.)The EIR in this case was sufficient as a matter of law. (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1019[280 Cal.Rptr. 478] [EIR found adequate because it set forth measures to reduce ***698** the secondary *environmental* effects caused by the need for additional parking].) [FN24]

FN24 Significantly, the City Planning Code itself does not require new commercial projects in the downtown commercial retail district to provide additional off-street parking. Thus, Planning Code section 161 states in pertinent part as follows: "(c) In recognition of the compact and congested nature of the downtown area ..., the accessibility of this area by public transit, and programs for provision of public park-

> ing facilities on an organized basis at specific locations, no off-street parking shall be required for any use, other than dwellings where a requirement is specified, in any C-3 ... Commercial Districts."

We also note that the City required the developer, Foster City, to pay $1.5 million for the development of parking solutions in the SOMA area, and at least $1.25 million more for improvements to the BART/MUNI station at Powell Street and other improvements to help facilitate use of public transit. Although not termed as such by the EIR, this nearly $3 million in funds to alleviate the traffic and parking impacts of the Project constitutes a significant mitigation measure in and of itself. (Cf. *Save Our Peninsula, supra,* 87 Cal.App.4th at pp. 139-142 [upholding EIR calling for developer payments to government fund as mitigation measure for traffic impacts].)

Sufficiency Of Evidence Of Blight Under Redevelopment Law

(14a) Appellants concede that their contentions about the Project's arguable lack of compliance with the City Planning Code are not actionable because the Project was incorporated into the Yerba Buena Center Redevelopment Plan, putting it under the jurisdiction of the Agency rather than the City. However, they contend the Project is *not* properly part of such a redevelopment plan, because the Emporium Site Redevelopment Area allegedly does not qualify as a "blighted area" under the Community Redevelopment Law. Appellants are wrong; the administrative record is replete with substantial evidence supporting the conclusion that the Emporium Site Redevelopment Area is blighted as a matter of law.

The Community Redevelopment Law

Under the Community Redevelopment Law, redevelopment agencies have the power to systematically revitalize urban areas that have deteriorated to the point that private investment alone can no longer succeed, even with ordinary government assistance. (Health & Saf. Code, §§ 33037, 33131.)Before designating a redevelopment area, the local legislative authority must make a determination that the area proposed for redevelopment satisfies the statutory definition of "blight." (Health & Saf. Code, § 33367, subd. (d)(1).) To be found blighted, an area must satisfy four criteria. (*Friends of Mammoth, supra,* 82 Cal.App.4th at pp. 538-539;*County of Riverside v. City of Murrieta* (1998) 65 Cal.App.4th 616, 620, 624-625[76 Cal.Rptr.2d 606].) It must be (1) "predominantly urbanized" (Health & Saf. Code, § 33030, subd. (b)(1)); (2) characterized by one or more statutorily defined conditions of ***699** *physical* blight (Health & Saf. Code, § 33030, subd. (b)(2)(A)); (3) characterized by one or more statutorily defined conditions of *economic* blight (Health & Saf. Code, § 33030, subd. (b)(2)(B)); and (4) affected by a cumulative effect of physical and economic blight "so prevalent and so substantial that it causes a reduction of or a lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden on the community which cannot be reasonably expected to be reversed or alleviated by private enterprise or government action, or both, without redevelopment." (Health & Saf. Code, § 33030, subd. (b)(1).)

Among the *physical* conditions of blight specified by the controlling statute are "[b]uildings in which it is unsafe or unhealthy for persons to live or work" because of building code violations, dilapidation, deterioration, faulty or inadequate utilities or similar factors; and "[f]actors that prevent or substantially hinder the economically viable use or capacity of buildings or lots," based on elements such as substandard, obsolete or defective design, awkward floorplan or inadequate size given present standards and market conditions. (Health & Saf. Code, § 33031, subd. (a)(1), (2).) Statutorily defined *economic* conditions of blight include "[d]epreciated or stagnant property values or impaired investments," "[a]bnormally high business vacancies," and "[a] high crime rate that constitutes a serious threat to the public safety and welfare." (*Id.*,§ 33031, subd. (b)(1), (2), (5).) Significantly, "[a] project area need not be restricted to buildings, improvements, or lands which are detrimental or inimical to the public health, safety, or welfare, but may consist of an area in which such conditions predominate and injuriously affect the entire area. A project area may include lands, buildings, or improvements which are not detrimental to the public health, safety or welfare, but whose inclusion is found necessary for the effective redevelopment of the area of which they are a part." (*Id.*, § 33321.)

(15) On appellate review of a decision validating a redevelopment plan under the Community Redevelopment Law our role is a limited one. It is not the appellate court's place to reweigh the evidence or exercise its own independent judgment. We must instead confine ourselves to determining whether the findings and determinations of the responsible agencies are supported by substantial evidence in the administrative record. (*In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal.2d 21, 38-41[37 Cal.Rptr. 74, 389 P.2d 538] ["the trial court was correct in its refusal to reweigh the evidence and in confining itself to determining whether the findings and determinations of the inferior bodies [regarding blight] were supported by substantial evidence"]; *Friends of Mammoth, supra*, 82 Cal.App.4th at p. 538 [standard of review on appeal of decision validating redevelopment plan is ***700** "substantial evidence in the administrative record demonstrating the existence of specific characteristics of urbanization and blight"]; *Beach-Cour- chesne v. City of Diamond Bar* (2000) 80 Cal.App.4th 388, 394[95 Cal.Rptr.2d 265] [same] (*Beach-Courchesne*);*Morgan, supra,* 231 Cal.App.3d at p. 257 [" 'The substantial evidence standard, not the independent exercise of the court's judgment, governs judicial review of the findings and determinations of an agency and legislative body in the adoption and approval of a redevelopment plan' [citation]"].)

Substantial Evidence Of Blight Exists

(14b) As seen, the record need only establish one condition each of physical and economic blight. (Health & Saf. Code, § 33030, subd. (b)(2)(A).) The record in this case contains sufficient substantial evidence of both physical and economic blight to support the City's finding that the Emporium Building and its ancillary structures met the qualifications for inclusion in a redevelopment area under the applicable statutory definitions of the Community Redevelopment Law. FN25

FN25 There is no dispute that the Emporium Site Redevelopment Area is "predominantly urbanized," and thus fulfills the first essential requirement for inclusion in a redevelopment area. (Health & Saf. Code, § 33030, subd. (b)(1).)

Evidence On Existing Conditions In The Administrative Record

The Agency's Existing Conditions Survey Report (Survey Report) was prepared by licensed civil engineers John B. Dykstra & Associates and Artek Consulting Engineers. This Survey Report carefully analyzed each of the 12 individual buildings in the Project area, exhaustively documenting its particular physical and structural deficiencies and specific adverse conditions. Adverse physical conditions considered "major" include general dilapidation or very serious deterioration of major parts of the structure; abandonment and vandalization; structural failure such as cracked or subsided foundations and sagging walls or roofs; and structural weakness, such as inadequate foundations, substandard construction, or unreinforced masonry walls. Based on its survey and analysis of the conditions, the Agency then rated each building in the Project area on a scale of 1 to 5, with the highest rating awarded buildings in "[g]eneral excellent condition" and with no rehabilitation required; and the lowest rating assigned to buildings with "[v]ery extensive physical/structural deficiencies," a "[v]ery high" likely cost of correcting such deficiencies, and a potential for private economic rehabilitation rated as "[v]ery difficult, if not impossible."

Based on the Agency's field surveys and archival research, the Survey Report rated nine of the 12 buildings in the Emporium Site Redevelopment ***701** Area as category 1 or 2, with very extensive or extensive physical and structural deficiencies, very high or high costs to correct them, and low potential for private rehabilitation. Specifically, the Survey Report assigned the Emporium Building a rating of 2, "[e]xtensive physical/structural deficiencies," based on the presence of adverse physical conditions and significant cumulative deferred maintenance, manifested in cracked walls, decayed and leaking roofing materials, aging electrical and plumbing systems, and extensive water damage to ceilings and walls. The report also pointed out that the Emporium Building has unreinforced masonry walls dating from 1896, as well as unreinforced masonry columns between the fourth floor and the top of the seven-story office building on the facade, with the result the Building was likely to suffer serious damage or even collapse in a future severe earthquake. It would also be difficult to adapt the Building to modern retail use because of its inefficient configuration, different levels, and haphazard connections with its adjoining annexes, which in many cases resulted in forklifts being required to move goods and materials from one part of the Emporium complex to another. In addition, the report noted that the Emporium Building has substandard heating and ventilation, with no heat or fresh air provided to much of the Building and no air conditioning system at all. The Building is now completely vacant, and has been largely unoccupied since 1996.

Of the 11 other buildings in the Project area, most are derelict, vacant and abandoned. Six of these buildings were given the same low rating of 2 as was given to the Emporium Building itself, and two more buildings were given the lowest possible rating of 1. Only three buildings were given higher ratings. Two buildings were rated 3. Only the Milwaukee Furniture Building at 832 Mission Street, the one building which had been retrofitted and was still occupied by operating commercial enterprises, was given a rating of 4. The average building condition rating for the entire Emporium Site Redevelopment Area is 2.2.

Substantial Evidence Of Physical Blight

The exhaustive analyses contained in the existing conditions Survey Report, the EIR, and the Agency's report to the Board provide substantial evidence to satisfy the finding of *physical* blight. All but one of the major buildings in the Emporium Site Redevelopment Area were built in or before 1955. The record shows that nine of the 12 buildings under consideration-75 percent-are in a seriously deteriorated condition, with significant physical deficiencies that render them unsafe and unhealthy for occupancy by workers and the public. At least eight of the 12 buildings are susceptible ***702** to collapse in the event of a moderate to strong earthquake. Four of these buildings are of unreinforced masonry construction that has not been retrofitted at all; two additional buildings have unreinforced masonry walls; and the roofs of the other two buildings are supported by the unreinforced masonry walls of adjoining structures. On the basis of their seismic condition alone, eight of the 12 buildings in the Emporium Site Redevelopment Area are particularly susceptible to extensive damage or collapse in an earthquake, and meet the first statutory criterion for physical blight, namely, of being "unsafe or unhealthy for persons to live or work." (Health & Saf. Code, § 33031, subd. (a)(1).) Substantial evidence of blight has been found where only 25 percent of the commercial structures in the proposed redevelopment area were built with unsafe unreinforced masonry. (*Morgan, supra,* 231 Cal.App.3d at pp. 255-256.)

In addition, deteriorated and obsolete design conditions of the existing buildings in the project area "prevent or substantially hinder" their "economically viable use," as indicated by the high incidence of vacant, abandoned, or underutilized buildings. FN26 (Health & Saf. Code, § 33031, subd. (a)(2).) Like many commercial buildings built before the adoption in 1955 of the Uniform Building Code, the buildings in the Emporium Site Redevelopment Area have substandard foundations, poorly reinforced walls, inadequate connections between buildings and foundations, weak cripple walls, inadequate roof and floor membranes, and substandard construction. Almost all the buildings have poorly configured floor plans, haphazard arrangements of space; long narrow spaces with windowless sidewalls, missing or inadequate heating systems, missing or substandard restroom facilities, and potentially toxic or hazardous building construction materials. Three buildings in the Project area are obsolete one-story industrial warehouse buildings with no prospect for viable commercial use in this dense commercial downtown area. In addition, two lots in the area have access only on Jessie Street, a poorly maintained and narrow service alley between Market and Mission Streets. Their location, coupled with their small size, makes them virtually unusable for any profitable commercial use in today's market.

> FN26 Over 99 percent of the building square footage in the Emporium Site Redevelopment Area is currently unoccupied or abandoned.

In part because of the abandoned and decrepit nature of the buildings in the area, various portions-particularly along Jessie Street-suffer from the blight of virtual skid row conditions, with homeless encampments, trash, detritus and human excreta. The presence of these obvious symptoms of blight detracts considerably from the commercial viability of the Emporium Site Redevelopment Area in its current state. ***703**

Substantial Evidence Of Economic Blight

(16) The evidence in the administrative record is also replete with evidence of *economic* blight. Aside from the physical deterioration, functional obsolescence and prohibitive expense making it infeasible to adapt the existing Emporium Building to modern commercial use, economic blight is evidenced by the precipitous decline in sales at the Emporium department store throughout the 1990's and the Emporium's ultimate bankruptcy and closure in 1996. Given the age and condition of the Emporium Building and its neighboring annexes, Federated was simply unable to formulate a financially feasible plan to restore and reuse the existing buildings. Significantly, the assessed value of the Federated properties at issue was reduced by $50 million from the upward reassessment that occurred at the time of the Emporium's change of ownership following the bankruptcy between 1991 and 1993. This reduction in assessed value is indisputable and powerful evidence of "[d]epreciated or stagnant property values or impaired investments," one of the definitions of conditions that cause economic blight under the controlling statute. (Health & Saf. Code, § 33031, subd. (b)(1).)

As the existing conditions survey report shows, the rest of the Project area consists of dilapidated, derelict, vacant and/or underutilized buildings. Like the Emporium Building, most of these buildings are economically obsolete because their physical plan is inappropriate for modern commercial or retail use. Even if commercially viable, they would in any event require large rehabilitation expenditures to make them usable. All these are indisputable evidence of two of the statutory criteria of economic blight, namely "[d]epreciated or stagnant property values or impaired investments," and "[a]bnormally high business vacancies." (Health & Saf. Code, § 33031, subd. (b)(1), (2).) Although the abnormally high vacancy rate alone would be sufficient to support the City's finding of economic blight, the record also shows that there is an elevated crime rate in the area, a factor independently establishing economic blight under the statutory definition. (*Id.* § 33031, subd. (b)(5).)

Substantial Evidence Of Burden On Community Re-

quiring Redevelopment

(17) Finally, and in addition to the findings of physical and economic blight, an additional finding must be made that the blighted condition of the subject area is such that "it constitutes a serious physical and economic burden on the community" which cannot reasonably be expected to be alleviated or reversed without redevelopment. (Health & Saf. Code, § 33030, subd. (b)(1).) The evidence in this record shows that, without a substantial ***704** infusion of public assistance, planning, tax incentives and investment, the private market simply cannot be expected to revitalize the Emporium Site Redevelopment Area. As seen, there is a massive financial gap between-on the one hand-the extraordinarily high costs of preparing the site, rehabilitating and preserving the most historically and architecturally significant portions of the Emporium Building, providing the necessary infrastructure for the large-scale project and making transit and circulation improvements in the area, and-on the other hand-the feasible amount of investment which could reasonably be expected from private sources. This feasibility gap can only be filled with government assistance. The overwhelming evidence of this fact, found in the Sedway report and independently verified by the City's expert KMA and the City Architect, readily satisfies the Community Redevelopment Law's definition of blight for purposes of validating the inclusion of the subject Project in the Emporium Site Redevelopment Area.

Appellants' Contentions

Pleading that "space constraints do not permit detailed review" of the Survey Report or the other evidence of blight in the Project area, appellants do not cite *any* evidence in the record to contradict the finding of blight. Instead, in conclusory fashion, they simply recite their own lay opinions that none of the evidence of blight in the record satisfies the Community Redevelopment Law or appellate court analyses in cases on which they rely. Appellants' analysis of the record is insufficient as a matter of law, and the cases on which they rely are readily distinguishable on their facts.

Appellants cannot simply declare the record too large and complicated for them to analyze on this appeal. The tenor of appellants' argument is well exemplified by this statement in their opening brief: "While the *sum of evidence* in the Existing Building Survey and the [Sedway] Report to the Board note deferred maintenance and *some* significant problems in a *few* of the buildings, there is *no evidence* that *many* of the primary buildings could not be rehabilitated with a *willing owner*." (Italics added.) This statement, typical of appellants' "arguments," begs not just one, but a multitude of questions. What *is* the evidence-in the existing conditions survey report, the Sedway report, the draft, supplemental and final EIR's, the final report to the Board, and the rest of the administrative record-on blight? Appellants do not say; they instead ask us to read the 55-volume, 20,971-page record to see for ourselves. What *are* the "significant problems" noted in the Project area? Again, appellants do not address these problems at all; they simply dismiss them. What are the "few" buildings with "problems," and which are ***705** the "many" buildings that might be rehabilitated "with a willing owner"? Appellants are silent on these questions. Most important, who is this "willing owner," and from where is she or he supposed to appear? Appellants do not identify *any* source willing or able to provide the substantial level of private and/or public investment and expenditure necessary to preserve the existing Emporium Building and simultaneously realize the successful redevelopment of the decayed and abandoned buildings in the Project area.

If in fact there were no evidence in the record to support the findings of blight, appellants' approach might be appropriate. The difficulty for appellants is that, as seen, there *is* such evidence in the record, and it is substantial. (Cf. *Friends of Mammoth, supra,* 82 Cal.App.4th at pp. 540-560;*Beach-Courchesne, supra,* 80 Cal.App.4th at pp.

(18) At any rate, "a redevelopment plan may not be overturned on the basis of a speculative argument regarding possible private investment in the area at some future time [citation]." (*National City Business Assn. v. City of National City* (1983) 146 Cal.App.3d 1060, 1068[194 Cal.Rptr. 707].)

Rather than addressing the actual evidence in the record, appellants focus almost all their argument on the facts of other cases, blithely asserting that the Survey Report and other analyses in the record "do not satisfy" the rulings in those cases. However, the cases on which appellants rely are clearly distinguishable from this one.

In *Friends of Mammoth*, the case most heavily cited and relied upon by appellants, the redevelopment agency of the Town of Mammoth Lakes designated at least 1,100 acres of largely semirural land with low-intensity development as "predominantly urbanized" and "blighted." The redevelopment area included an airport, a golf course, a site designated for development of a community college, an industrial park, three partially developed recreation areas, all of downtown Mammoth Lakes, and a residential area of some 1,200 units, half of them condominiums. (*Friends of Mammoth, supra,* 82 Cal.App.4th at pp. 521-522.)The town claimed "blight" based on findings that less than 2 percent of the buildings in the project area suffered building code violations; 324 buildings, or approximately 25 percent of the total number of buildings in the project area, exhibited " 'visible and obvious signs of dilapidation or deterioration,' " defined *by the town* to include peeling paint, dry rot, and lack of maintenance; 273 buildings, or 21 percent of the total surveyed, suffered from "defective design" causing them to be nonfunctional or obsolete under current market conditions; 199 buildings, or 15 percent of the buildings surveyed, required seismic upgrading to meet ***706** seismic building code standards adopted in 1994; and various properties in the project area suffered from "inadequate lot sizes," "substandard site design," or "inadequate site improvement." (*Id.* at pp. 538-560.)In reviewing the record, the court of appeal had no difficulty determining that, contrary to the town's findings, the mere fact that 85 percent of this huge project area was "not vacant" did not render it predominantly urbanized as required by the Community Redevelopment Law. With regard to the portions of this area that were developed, the appellate court concluded that the criteria utilized by the local agency for "physical blight" failed to establish that any of the buildings and structures on the land proposed for redevelopment were unsafe or unhealthy for persons to live or work in, or were so substandard as to prevent or substantially hinder their economically viable use. (*Ibid.*)

Friends of Mammoth is clearly distinguishable from the instant case. The Emporium Site Redevelopment Area is 4.5 acres, not 1,100 acres. In contrast to the 15 percent of buildings that failed to comply with *current* seismic regulations in *Friend of Mammoth* eight of the 12 buildings in the Emporium Site Redevelopment Area are unreinforced masonry buildings that would almost certainly suffer serious damage in any future earthquake and could completely collapse in a major earthquake. Thus, this case involves a large proportion of buildings that *do* present an actual hazard to human health and safety; *Friends of Mammoth* involved a small proportion of modern buildings not in technical compliance with contemporary standards, with no showing whatsoever of the extent of any hazard to health and safety involved. Unlike the Town of Mammoth Lakes' perfunctory survey of over 1,000 buildings in the huge project area, in this case the City did an exhaustive and detailed analysis of *each* of the *12* buildings in the Emporium Site Redevelopment Area. Finally, unlike the detailed analysis in the Survey Report and the Agency's final report to the Board of how the identified conditions of physical blight hinder the economic viability of each of the buildings in the Emporium Site Redevelopment Area, there was *no* analysis of how the overbroad findings of physical blight would prevent or substantially hinder the economic viability of the buildings in that project area. (*Friends of*

Mammoth, supra, 82 Cal.App.4th at pp. 548-554.)

The case of *Beach-Courchesne, supra,* 80 Cal.App.4th 388, presents an even more egregious misuse of the Community Redevelopment Law by a municipality. In that case, the City of Diamond Bar, an affluent Los Angeles suburb, attempted to designate a huge 1,300-acre redevelopment area to encourage new retail development and increase its sales tax base. (*Id.* at pp. ***707** 392-393.)The evidence of physical blight was limited to a survey indicating that some 53 percent of the buildings in the survey area suffered from deferred maintenance, 8 percent required moderate rehabilitation, and only a single building was in need of extensive rehabilitation. Not one structure in the entire proposed redevelopment area was identified as being unsafe or unhealthy for persons to live or work in. Although some 27 percent of the buildings were said to exhibit one or more conditions of "defective design," there was no explanation as to how this alleged design defect hindered their economically viable use. (*Id.* at pp. 398-401.)Clearly, *Beach-Courchesne* is entirely distinguishable and inapposite to the case before us.

Contentions Of Amici Curiae

In their letter brief, amici curiae (Amici) focus primarily on the Emporium Building itself, contending that whatever the blighted conditions of the rest of the study area, that historic structure cannot be said to satisfy the statutory conditions of blight. Their arguments miss the mark.

(19) In the first place, Amici erroneously and improperly rely on matters outside the administrative record, including their own studies and materials, as well as speculative assumptions about the rehabilitative history of other buildings in the downtown area. None of these materials or speculations is relevant, or may be considered by this court at this point of the case. (*Western States, supra,* 9 Cal.4th at pp. 571-572 [review is confined to matters in the administrative record].) If amici had wished to include this evidence in the record, they should have done so during the lengthy administrative process. They did not then, and it is too late to do so now.

Like appellants, Amici also ignore the existing administrative record. Thus, they dismiss the undisputed fact that the Emporium Building has unreinforced masonry walls and similarly unreinforced supporting columns in most of the upper portions of the Building, all subject to collapse in a serious earthquake. They also ignore the fact that the walls and ceilings throughout the Building are cracked, deteriorating, and suffering from substantial water damage; the plumbing and electrical utilities are antiquated; and the Building's closely spaced columns, low floor-to-ceiling height and haphazard arrangement of space renders it functionally obsolete for modern commercial purposes. Contrary to the presumption of both Amici and appellants, the fact that the Project envisions rehabilitating and preserving the Emporium Building's facade does not mean it is economically feasible to restore the *entire Building* to historical preservation standards. Finally, like appellants, Amici apparently assume the Emporium Building could be rehabilitated with private investment alone, or with only modest public assistance. Once again, they ignore the substantial evidence in the record that only ***708** with substantial public intervention and financial participation can the Emporium Building, together with its several adjunct buildings and annexes, be rehabilitated and put to viable economic use.

Conclusion

In the final analysis, the legal issues presented by appellants and amici in this case mask the actual grievance underlying their arguments. Their real objections lie not with the sufficiency of the EIR as an information document, or even with the technical compliance of the proposed Project with the City's General Plan and the Community Redevelopment Law. Rather, appellants' and Amici's real grievance is with the substantive policy choices made by the City in seeking to alleviate the clearly blighted condition of this central and vital portion of downtown San Francisco by using the financial and institutional resources made available by the Community Redevelopment Law, even though to do so must permanently alter a portion of an important and prominent building of great historical and architectural significance to San Francisco.

We are not unmindful of the important environmental and historical preservation values at stake in this case. As the EIR itself acknowledges, the Emporium Building is one of the most historically and architecturally significant commercial buildings in San Francisco. In a perfect world, the Building could be preserved and put to some vibrant new use which would return it to life and fulfill its potential. Even under the best conditions and the most flourishing economies, however, it is difficult to find willing developers for an outsized, aging, abandoned retail department store which is in desperate need of expensive rehabilitation and upgrading. In the contemporary commercial world in which we live, altruistic investors with a penchant for large-scale historic preservation and unlimited means to accomplish it are exceedingly rare. It must not be forgotten that a significant portion of the Emporium Building will be preserved, restored and rehabilitated in the new structure. Under the circumstances, the proposed Project represents perhaps the best compromise that can be hoped for from a preservationist standpoint-a fitting balance between the demands of the commercial marketplace and respect for the past.

In any event, review of the substantive policy decisions on how best to utilize the historic Emporium Building is clearly beyond our jurisdiction. (*Laurel Heights I, supra,* 47 Cal.3d at p. 392.)"Differences of opinion, no matter how strongly presented, do not warrant rejection of [public agencies'] action, where it has been demonstrated that [the agencies] were presented ***709** with opposing viewpoints, considered them extensively and on the basis of evidence selected one alternative rather than another. [Citation.]" (*Morgan, supra,* 231 Cal.App.3d at p. 258.)In this case, the Agency, the City, and the trial court all found substantial evidence of blight within the Project area, concluded that the Emporium Building had no substantial remaining market value, and found that there were no feasible alternatives to the Project as proposed. We conclude that there is substantial evidence to sustain these determinations and findings, and that the actions and decisions of the City in certifying the EIR and approving the inclusion of the Project in an expanded redevelopment area were neither arbitrary or capricious. We therefore affirm the trial court's judgment denying the writ petition and request for invalidation.

Disposition

The judgment is affirmed. Each side shall bear its own costs on appeal.

Corrigan, J., and Parrilli, J., concurred.
A petition for a rehearing was denied October 28, 2002, and appellants' petition for review by the Supreme Court was denied December 18, 2002. ***710**

Cal.App.1.Dist.
San Franciscans Upholding the Downtown Plan v. City & County of San Francisco
102 Cal.App.4th 656, 125 Cal.Rptr.2d 745, 02 Cal. Daily Op. Serv. 10,062, 2002 Daily Journal D.A.R. 11,417

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EXHIBIT 13

Sequoyah Hills Homeowners Ass'n v. City of Oakland (W.P.N. Associates)
Cal.App. 1 Dist.,1993.

Court of Appeal, First District, Division 2, California.
SEQUOYAH HILLS HOMEOWNERS ASSOCIATION, Plaintiff and Appellant,
v.
CITY OF **OAKLAND** et al., Defendants and Respondents.
W.P.N. ASSOCIATES, Real Party in Interest.
No. A059689.

Nov. 30, 1993.

Homeowners association sought judicial review of city council decision approving developer's environmental impact report. The Superior Court, Alameda County, No. 694546-4,R. Marsh, J., held for city, and appeal was taken. The Court of Appeal, Phelan, J., held that: (1) city council's findings were sufficient to satisfy California Environmental Quality Act standards, and (2) city council did not abuse its discretion in concluding that project was consistent with city's applicable general plan.

Affirmed.

West Headnotes

[1] Administrative Law and Procedure 15A 754.1

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak754 Discretion of Administrative Agency
15Ak754.1 k. In General. Most Cited Cases

Abuse of discretion is established, on judicial review of agency action, if agency has not proceeded in manner required by law or if determination or decision is not supported by substantial evidence.

[2] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
(Formerly 199k25.15(10) Health and Environment)

Judicial inquiry into adequacy of environmental impact report is governed by abuse of discretion standard; it is not court's function to pass on correctness of report's environmental conclusions, but only upon its sufficiency as informative document.

[3] Environmental Law 149E 604(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek598 Adequacy of Statement, Consideration, or Compliance
149Ek604 Particular Projects
149Ek604(2) k. Land Use in General. Most Cited Cases
(Formerly 199k25.10(8) Health and Environment)

Real estate developer's environmental impact report considered reasonable range of alternatives, and thus satisfied California Environmental Quality Act; though it was alleged that report failed to articulate decreased density alternative addressing project's visual impact, report analyzed reasonable range of alternatives which were both feasible and capable of offering substantial environmental advantages over original project proposal. West's Ann.Cal.Pub.Res.Code §§ 21002, 21061.1.

[4] Environmental Law 149E 606

149E Environmental Law
149EXII Assessments and Impact Statements

149Ek606 k. Effect of Statement or Other Requirements. Most Cited Cases
(Formerly 199k25.10(8) Health and Environment)
City council's rejection of decreased density alternative to real estate developer's proposed project, on ground of infeasibility, was not abuse of discretion; project as proposed complied with all general plan, zoning and development policies and there was no showing that approved density would have specific, adverse impact upon public health or safety. West's Ann.Cal.Pub.Res.Code § 21081(c); West's Ann.Cal.Gov.Code § 65589.5(j).

[5] Environmental Law 149E ⚿604(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek598 Adequacy of Statement, Consideration, or Compliance
149Ek604 Particular Projects
149Ek604(2) k. Land Use in General. Most Cited Cases
(Formerly 149Ek577, 199k25.10(1) Health and Environment)
City council's findings as to cumulative visual impact, when approving developer's proposed real estate project, were adequate; city council found that any development on site would unavoidably affect visual resources and that adverse impact was outweighed by benefits to be gained by approving project at proposed density to increase supply of available housing in city. West's Ann.Cal.Pub.Res.Code § 21081.

[6] Environmental Law 149E ⚿595(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek595 Particular Projects
149Ek595(2) k. Land Use in General. Most Cited Cases
(Formerly 199k25.10(4) Health and Environment)
Change in land use from open space to residential was not significant environmental effect for which specific finding was required in order to approve developer's environmental impact report. West's Ann.Cal.Pub.Res.Code § 21081.

[7] Zoning and Planning 414 ⚿381.5

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(A) In General
414k378 Grounds for Grant or Denial
414k381.5 k. Maps, Plats, or Plans, Conformity to Regulations. Most Cited Cases
City council's finding that developer's proposed project was consistent with city's applicable general plan was not abuse of discretion; there was evidence that project was consistent with land use designation for site and with applicable policies of city's comprehensive plan. West's Ann.Cal.Gov.Code §§ 66473.5, 66474.

****183*708** Joseph J. Kubancik, Vallejo, Zach Cowan, Berkeley, for plaintiff and appellant.
Mark Wald Office of the City Atty., Oakland, for defendants and respondents.
David A. Self, Oakland, for real party in interest.
***709** PHELAN, Associate Justice.
Appellant Sequoyah Hills Homeowners Association (appellant) timely appeals from denial of a petition for writ of mandate by which it sought to overturn a decision by respondent Oakland City Council to approve a housing development in the Oakland Hills. Appellant asserts that the environmental impact report (EIR) [FN1] and the findings underlying the city's approval of the project were inadequate under standards established by the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et ****184** seq.) Appellant further contends that the project is inconsistent with the applicable general plan and, thus, violates the Subdivision Map Act. (Gov.Code, § 66410 et seq.) We granted the motion of the developer and real party in interest, W.P.N. Associates (WPN), to expedite this appeal. We affirm.

FN1. The parties refer to a draft environmental impact report (DEIR), and a final environmental impact report (FEIR). In fact, the FEIR consists of the DEIR (or revision thereof), along with comments and recommendations received on the DEIR, a list of persons commenting on the DEIR, responses of the lead agency to the significant environmental points raised by the comments, and any other information added by the lead agency. (Guidelines for Implementation of the California Environmental Quality Act, Cal.Code Regs., tit. 14 [hereafter Guidelines], § 15132.)

FACTUAL AND PROCEDURAL BACKGROUND

In September 1989, WPN filed its initial request for environmental review of a proposed project to develop a 10.1-acre parcel of land which slopes downhill from Skyline Boulevard in Oakland, just north of Keller Avenue. The land is zoned R-30, which allows up to 88 new lots on the site, barring physical site restraints. Rather than seek to build the full 88 units permitted by zoning regulations, WPN "pre-mitigated" the project by proposing to build only 46 homes. The project, "Oak Knoll Vista Estates" (the Oak Knoll project), was to abut the backyards of homes on Surrey Lane.

The proposed project and several of the alternatives considered by city officials included a plan to use a loop-road design to efficiently group the lots together, with approximately one quarter of the parcel allotted to a "conservation easement" to provide a "buffer of natural untouched land between the subdivision and its neighbors." This design was also intended to eliminate problems of having the project homes front directly on Skyline Boulevard, including traffic congestion that might otherwise result from homeowners backing their cars onto Skyline from their driveways. The stated objective of the project sponsor was to "develop a community of single-family residences which is compatible with surrounding land uses and ***710** which optimize [*sic*] the scenic and topographic features of the site," which would also be "the least expensive single-family housing for the vicinity."

On March 1, 1990, the city planning department informed WPN that an EIR would be required for the proposed project. The DEIR was prepared and submitted to the planning department in December 1990. The DEIR thoroughly analyzed the project proposal and identified several significant adverse environmental impacts that would result from the development, all but one of which could be avoided or mitigated to a level below significance. As to that impact, on "visual resources and visual quality," the DEIR states that "the visual quality would be significantly affected by any substantial development," and that "[s]ome visual impact is unavoidable." However, the DEIR also analyzed the problem thoroughly and concluded that architectural and site design elements, as well as sensitive materials selection, could be relied upon to substantially reduce many of the visual impacts.

The DEIR also included discussion of several project alternatives, including: (1) a no-project alternative; (2) an increased density alternative, under which 63 duet dwellings would be built on the site; (3) a mitigated alternative, under which 45 homes would be built, the conservation easement widened, an emergency access road installed, and a variety of architectural design changes and landscaping techniques utilized to mitigate the visual impacts of the project; and (4) a decreased density alternative under which 36 units would be built on wider lots that would decrease the need for grading and improve emergency access, but as to which the "visual impacts would be similar to the proposed project." After stating that the developer had rejected the decreased density alternative because the houses would necessarily be more expensive than those of the proposed project, the DEIR declares that the mitigated alternative would be "environmentally superior" to the proposed project because "significant and unavoidable impacts to visual resources and visual quality are reduced as much as may be possible at the project density."

The Oakland Planning Commission held five public hearings to receive comments on the project during the period from January through June 1991. The FEIR, which was completed by April 15, 1991, incorporates many of those comments and the city's responses to the significant environmental points raised thereby. As is obvious from the DEIR and FEIR, and the transcripts of the planning commission hearings, the range of comments received was voluminous. Notably,****185** the planning commission had extensive input from the opponents of the proposed project, especially those homeowners residing on Surrey Lane immediately adjacent to the project site.

***711** After considering the information presented, the planning commission voted on June 26, 1991, to certify the FEIR as having been completed in accordance with CEQA, and to adopt the recommendations and findings contained in the staff report of the same date. Among the commission's findings were the following: (1) specific mitigation measures should be required as conditions of approval of the project; (2) the identified mitigation measures would avoid (or mitigate to levels below significance) all of the significant environmental effects identified in the FEIR, except the unavoidable visual impact associated with the project; (3) the only way the visual impact could be significantly reduced would be to "substantially reduce" the number of proposed lots; and (4) the benefits of the proposed project outweigh the unavoidable adverse environmental impact in that the project "will promote the City's efforts to increase the supply of housing available in the City while continuing to support careful residential land development in the Oakland Hills area."

After a lengthy debate about proposals for reducing the number of lots to address the neighbors' continuing concerns about drainage and visual impact, the planning commission also voted to recommend approval of the subdivision map application for a tract including 45 lots. In this regard, the planning commission made findings, as required by the Subdivision Map Act, as follows: (1) the project is consistent with the density permitted by zoning regulations; (2) the project density (one unit per 9,796 square feet of land) exceeds the density designated for the area (one unit per 10,000+ square feet of land) in the "Illustrative Future Land Use" map contained in the Oakland Comprehensive Plan (OCP); [FN2] (3) nevertheless, the project density is "appropriate" under OCP policies, which provide that the land use classifications are flexible and that the city will prefer a relatively higher density for a given project where certain conditions are met; and (4) all of the relevant conditions are met in this case. Accordingly, the planning commission recommended approval (under specified conditions) of a tentative map for the 45-unit "mitigated alternative" described in the EIR.)

FN2. The OCP consists of several documents, including the Oakland Policy Plan (OPP) and the Land Use Element of the Comprehensive Plan (LUE).

Appellant sought review of the planning commission's decision by taking an appeal to the city council. The city council held four more public hearings between September 15 and December 17, 1991. On that latter date, the city council voted to sustain, and incorporated by reference, the decision of the planning commission. The city council also specifically found that the project was in compliance with the applicable general plan, zoning, and development policies of the City of Oakland, and that there would be no ***712** adverse impact on public health or safety if the project were approved under the specified conditions. Accordingly, the city council determined that Government Code section 65589.5, subdivision (j), prevented it from requiring the developer to lower the project density.

On February 13, 1992, appellant filed a petition for writ of mandate and complaint for injunctive relief, seeking to overturn the city council's decision. After considering exhaustive briefing and oral argument in connection with the petition, the superior court denied appellant's petition and entered judgment in favor of the City and WPN on September 14, 1992. This appeal followed.

DISCUSSION

A. *The EIR and the City's Findings in Support of the Oak Knoll Project Were Adequate to Satisfy CEQA Standards.*

[1][2] In reviewing the city council's actions under CEQA, both the trial court and this court look to Public Resources Code section 21168.5, which provides that our inquiry "shall extend only to whether there ****186** was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, 276 Cal.Rptr. 410, 801 P.2d 1161[*Goleta II*].) Our inquiry into the adequacy of the EIR is governed by the same abuse of discretion standard. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74, 118 Cal.Rptr. 34, 529 P.2d 66.) It is not our function to pass on the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document. (*Twain Harte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 673, 188 Cal.Rptr. 233.) We look "not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines, § 15151.)

1. *The Oak Knoll EIR Considered a Reasonable Range of Alternatives.*

[3] Under the plan approved by the city council, the impact on *visual* resources is the only identified environmental impact of the Oak Knoll project which is not mitigated below the level of significance. As defined in the EIR, "Visual resources and visual quality are terms used to describe human perceptions of combining form, bulk, scale, texture, color, and viewing range of a site, relative to the context of its locale. Such perceptions are ***713** difficult to quantify and are essentially subjective in scope." Nevertheless, the EIR recognizes that "project impacts to visual conditions are important environmental concerns[ ] subject to CEQA assessment."

Appellant contends that the EIR was inadequate because it failed to articulate a "decreased density alternative" which actually addressed the project's visual impact. Respondents counter that the EIR is adequate under CEQA standards in that it analyzed a reasonable range of project alternatives which are both feasible and capable of offering substantial environmental advantages over the original project proposal. We believe the respondents have the better of this argument.

The California Supreme Court recently reaffirmed that "an EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project, or to the location of the project, which: (1) offer *substantial* environmental advantages over the project proposal (Pub.Resources Code, § 21002); and (2) may be 'feasibly accomplished in a successful manner' considering the economic, environmental, social and technological factors involved. (Pub.Resources Code, § 21061.1; Guidelines, § 15364; [*Citizens of Goleta Valley v. Board of Supervisors* (1988)] 197 Cal.App.3d 1167, 243 Cal.Rptr. 339[*Goleta I*].)" (*Goleta II, supra,* 52 Cal.3d at p. 566, 276 Cal.Rptr. 410, 801 P.2d 1161, original emphasis deleted, emphasis added.) The treatment of alternatives in the Oak Knoll project was adequate under this standard.

The Oak Knoll EIR provides a rather detailed analysis of the visual impacts of the original project proposal from a variety of vantage points. The EIR notes that the project would stand out because of its relatively higher density and its location on a prominent hillside overlooking the existing residential development. Other adverse visual impacts were attributed to the "row-like" appearance of portions of the development and the fact that a few of the homes seemed to "jut above the ridgeline," at least from some perspectives.

The EIR also analyzes two alternatives to the original proposal, each of which would provide some relief from the project's visual impacts. Although it is almost as dense as the project originally proposed, the 45-unit "mitigated alternative" utilizes a significantly modified site plan and a variety of design elements to help break up the "row-like" appearance, lower the "jutting" roof lines, and generally heighten the overall visual interest of the project. The mitigated alternative also provides for a wider conservation easement to set the project homes further back from the rear property lines of the Surrey Lane homes. Additionally, the EIR notes that selection of ***714** appropriate landscaping and building materials would help the project blend with the natural landscape. Although the net result of these measures is ****187** a "visually attractive residential development at the project density," one which is "environmentally superior" to the original project proposal, the EIR concludes that the mitigated alternative would still have a substantial impact on visual conditions for neighbors of the project on Surrey Lane and in other adjoining areas. Similarly, the 36-unit "decreased density alternative" discussed in the EIR would enlarge the conservation easement, reduce the overall bulk of the project and, thereby, help overcome the visual impacts on residences in the Surrey and Keller Lane areas. However, this alternative would have a visual impact "similar" to that of the project as originally proposed.

Appellant contends that, upon finding a significant visual impact from the mitigated and 36-unit alternatives, the EIR should have examined additional "decreased density alternatives." We agree with respondents that this was not required by CEQA and likely would have been an exercise in futility. The EIR concluded that "any substantial development" of the project site would have a significant visual impact, and that some visual impact is "unavoidable." Further, the EIR determined that, from the perspective of local residents and passersby, "new development of a major portion of the site *at any density* would unavoidably affect the existing open space visual character of the site vicinity." (Emphasis added.) Thus, even if the EIR had examined the additional alternatives proposed by appellant (e.g., a 23-unit or a 10-unit project) it would not eliminate the significant visual impacts from the project. Plainly, the EIR was not required to analyze every possible lower-density alternative that was or might have been proposed. (See *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1028-1029, 185 Cal.Rptr. 41.) As in *Village Laguna,* we conclude that the EIR evaluation of plans for development of 0, 36, 45, 46 and 63 units at the Oak Knoll site was "sufficient to satisfy the informational goal of CEQA." (134 Cal.App.3d at p. 1028, 185 Cal.Rptr. 41.)

2. *The City Council Did Not Abuse its Discretion by Rejecting a Decreased Density Alternative on the Grounds of Infeasibility.*

[4] Appellants next contend that there is not substantial evidence to support the city council's finding that the 36-unit alternative and, by implication, any other decreased density alternative would not be ***715** feasible.[FN3] CEQA does not require extended consideration of project alternatives that are not "feasible." (*Goleta II, supra,* 52 Cal.3d at p. 566, 276 Cal.Rptr. 410, 801 P.2d 1161.) In fact, it permits public agencies to approve projects for which significant environmental impacts have been identified upon a finding that "economic, social, or other considerations" render such alternatives infeasible. (Pub.Resources Code, § 21081, subd. (c).) As defined in the CEQA Guidelines, " 'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account *economic,* environmental, *legal,* social and technological factors." (Guidelines, § 15364, emphasis added.) The EIR discusses the concept of economic feasibility, but only indirectly, by incorporating the project sponsor's comments that-based on its market surveys-it had rejected the concept of a lower-density project "because the houses would be necessarily more expensive than

those of the proposed project," and would defeat the project objective of providing the "the least expensive single-family housing for the vicinity." The city council accepted WPN's evidence that a decreased density alternative was economically infeasible, but also found that requiring a decrease in project density would be *legally* infeasible in that it would be prohibited**188 by Government Code section 65589.5, subdivision (j).

> FN3. Appellant also appears to argue that the EIR did not adequately address the issue of economic feasibility of the alternatives to the proposed project. While economic information about a given project may be included in an EIR, it is not required. (Guidelines, § 15131.) Although the ultimate decision maker is required to consider economic and social factors in making its feasibility findings, the agency may receive such information in whatever form it desires. (*Ibid.*) If the decision maker is correct in finding that a given alternative is infeasible, the EIR will not be deemed inadequate simply because it failed to include an analysis of that alternative. (*Goleta II, supra,* 52 Cal.3d at p. 566, 276 Cal.Rptr. 410, 801 P.2d 1161.)

In relevant part, that section provides: "When a proposed housing development project complies with the applicable general plan, zoning, and development policies," a local agency may not require as a condition of approval that the project be developed at a lower density, unless the project "would have a specific, adverse impact upon the public health or safety" that cannot be mitigated without lowering the density. (Gov.Code, § 65589.5, subd. (j)(1).) As respondents argue, this enactment is not a legislative will-o'-the-wisp. Rather, it is based on a legislative finding that "The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California." (Gov.Code, § 65589.5, subd. (a)(1).)

In this case, the city council found that the Oak Knoll project complied with all general plan, zoning, and development policies. As discussed in section B, *infra,* we believe that these findings are supported by substantial ***716** evidence. Thus, the only way appellant can avoid the impact of section 65589.5, subdivision (j)(1), is by establishing that the project, at the approved density, will have a "specific, adverse impact upon the public health or safety." This they cannot do. There is no evidence to support such a conclusion, and the city specifically found that no such impact would result from the project. We conclude that the city did not abuse its discretion when it found that any decreased density alternative would be legally infeasible and approved the mitigated alternative.

3. *The City Council's Findings as to Cumulative Visual Impact and Change in Land Use Were Adequate.*

[5][6] Appellant's final contention as to CEQA compliance is that the city did not make adequate findings on the issues of "cumulative visual impact" and "change in land use," two impacts identified in the EIR. As originally described in the DEIR, the cumulative visual impact was described by the very general proposition that the Oak Knoll project would "diminish the amount of existing open space" and, when added to existing and nonspecific future development, would produce a "change to a more urban quality" in the area. When the FEIR was prepared, this impact was described as "significant," but only to the extent the Oak Knoll project would combine with a proposed development in the Dunsmuir Heights area.

We agree with respondents that it is reasonable to infer the city council addressed both the individual *and* cumulative visual impacts of the Oak Knoll project when it found that "any development on the site[ ] would also unavoidably affect visual resources." The city council also found that the adverse impact on visual resources was outweighed by the benefits to be gained by approving the project at the proposed density to increase the supply of available housing in the City. Those findings, plus the city's finding that the decreased density alternative would be legally infeasible, were sufficient to satisfy CEQA (Pub.Resources Code, § 21081) and its implementing regulations (Guidelines, §§ 15091, 15093).FN4

FN4. We also agree with respondents that, even if the city council's finding on cumulative visual impact was inadequate, it would be an idle act to order the city to revisit this issue now that the Dunsmuir Heights project has been disapproved. In this regard, we grant respondent's request to take judicial notice of the resolution denying the application for development of Dunsmuir Heights.

The change in land use from open space to residential was described in the EIR as one of the "Unavoidable Adverse Impacts If the Project is Implemented." However, as explained by the author of the EIR, Mr. Paul Cogley, this is not a "significant environmental effect" for which a specific finding is ***717** required. (Pub.Resources Code, § 21081; Guidelines, § 15091.) Even if it were, however, we believe that the city council's findings were adequate. The only way to have avoided or mitigated the loss of open space at the Oak Knoll site would have been to drastically reduce the density of the project, i.e., to disallow *any* substantial residential development. As we have already discussed, Government Code section 65589.5 prevented the city council from requiring a reduction in the density of the project.

****189** B. *The Oakland City Council Did Not Abuse its Discretion by Concluding that the Oak Knoll Project is Consistent With the City's Applicable General Plan.*

[7] Appellant next contends that the Oak Knoll project conflicts with certain provisions of the OCP, and should not have been approved. Gov.Code, §§ 66473.5, 66474.) The city council's determination that the Oak Knoll project is consistent with the OCP comes to this court with a strong presumption of regularity. (See *California Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal.App.3d 95, 106, 167 Cal.Rptr. 203.) To overcome that presumption, an abuse of discretion must be shown. (Code Civ.Proc., § 1094.5; *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644, 651, fn. 2, 150 Cal.Rptr. 242, 586 P.2d 556.) An abuse of discretion is established only if the city council has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. (Code Civ.Proc., § 1094.5, subd. (b).) We may neither substitute our view for that of the city council, nor re-weigh conflicting evidence presented to that body. (*Board of Trustees v. Munro* (1958) 163 Cal.App.2d 440, 445, 329 P.2d 765.)

1. *The City Council Did Not Abuse its Discretion by Concluding That The Project is Consistent with the Land Use Designation for the Oak Knoll Site.*

Appellant first argues that the Oak Knoll project is inconsistent with the OCP in that it does not conform precisely with the land use designation for the site. We reject this argument. In the first place, state law does not require an exact match between a proposed subdivision and the applicable general plan. (*Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 406-407, 200 Cal.Rptr. 237.) FN5 Rather, to be "consistent," the subdivision map must be "compatible with the objectives, policies, general ***718** land uses, and programs specified in" the applicable plan. (Gov.Code, § 66473.5.) As interpreted, this provision means that a subdivision map must be "in agreement or harmony with" the applicable plan. (*Greenebaum, supra,* 153 Cal.App.3d at p. 406, 200 Cal.Rptr. 237; 59 Ops.Cal.Atty.Gen. 129, 131 (1976); see also 67 Ops.Cal.Atty.Gen. 75 (1984).)

FN5. Appellant's reliance on *deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 217 Cal.Rptr. 790, is misplaced. *deBottari* dealt with zoning consistency, not the Subdivision Map Act, and involved an attempt by a citizens' group to place a referendum before the voters to repeal a rezoning ordinance passed by the city council. In that case, the court refused to overturn the city council's decision that the referendum would result in enactment of a zoning ordinance which would be "clearly" inconsistent with the recently amended general plan. (*Id.* at pp. 1210-1213, 217 Cal.Rptr. 790.) In this respect, *deBottari* supports the view that we defer to the Oakland City Council's consistency findings. (*Ibid.*)

Here the applicable plan provides that "[w]ithin most built-up residential areas, the density of new housing should in general not *greatly exceed* the area's existing density." (Emphasis added.) Accepting appellant's calculations of the density at 8,074 per unit,FN6 the Oak Knoll project would be in line with other recent residential development in the area.

FN6. Based on its own calculations and interpretation of OCP methodology, appellant asserts that the OCP designates the Oak Knoll site for a maximum of 36 units and that the density of the approved project (one unit per 8,075 square feet of land) exceeds that designated in the OCP (one unit per 10,000 or more square feet). In its brief, respondent does not seriously dispute this point. However, the record of the proceedings below indicates that the city planning commission came to a different conclusion. In its staff report, the commission appears to have calculated the density of the project as originally proposed (with 46 units) as one unit per 9,796 square feet of land. In light of our conclusion that the city council did not abuse its discretion in finding the approved project to be consistent with the OCP, this factual dispute is not material to our analysis.

Appellant nevertheless contends that the project is inconsistent with the OCP because it exceeds the density specified in an "Illustrative Future Land Use Map" (the Map) contained in the OCP. By its own terms, the OCP confers upon city officials some discretion to diverge from the details of the Map, so long as the variation serves the plan's policies and objectives as well or better. The Map merely "indicates in its broad configurations, *but only tentatively in its details,* the ****190** planned predominant land uses. Variation from the details is appropriate where it is demonstrated that this would serve the Comprehensive Plan's written goals and policies just as well or better." (Emphasis added.) Another part of the OCP, the "Land Use Element" emphasizes this point: "[T]he details on [the Map] are largely illustrative in nature, and closer studies may show that Plan goals and policies justify some variations from those details." FN7

FN7. In this regard, we agree with respondents that the LUE complies with Government Code section 65302. That section requires a "statement of the standards of population density and building intensity *recommended* for the various districts ... covered by the plan." (Emphasis added.)

We believe the proceedings in the planning commission and city council, as required by CEQA and the Subdivision Map Act, were such "closer ***719** studies" showing that variation from the details of the OCP is warranted for the Oak Knoll project. After consideration of all the information presented in those proceedings-including information contained in the EIR, expressions of concern about pressing housing needs in Oakland, and the views of the affected neighbors-it was well within the city council's discretion to find that the project density (i.e., that of the mitigated alternative) was consistent with the land use designation in the OCP.

2. *The City Council Did Not Abuse its Discretion by*

Concluding That the Project is Consistent with Applicable OCP Policies.

Finally, appellant argues that the Oak Knoll project should not have been approved because there is some evidence that it conflicts with three OCP policies encouraging development which is sensitive to natural land forms, and the natural and built environment. Respondents acknowledge the existence of this evidence, which includes an opinion by the city's EIR consultant that removal of a knoll on the site, and development on slopes of greater than 30 percent (on lots 16, 17, and 18 only), conflict with the three policy statements on which appellant relies. Respondents note, however, that appellant conveniently overlooks the substantial body of evidence that the Oak Knoll project would be *fully* consistent with at least 14 of the 17 OCP policies which were deemed pertinent; they also point to evidence that the project would even be consistent, in most respects, with the three policies on which appellant relies.

Respondents also argue that none of the policies on which appellant relies is mandatory, and that a given project need not be in perfect conformity with each and every OCP policy. We agree. Indeed, it is beyond cavil that no project could completely satisfy every policy stated in the OCP, and that state law does not impose such a requirement. (*Greenebaum, supra,* 153 Cal.App.3d at pp. 406-407, 200 Cal.Rptr. 237; 59 Ops.Cal.Atty.Gen. 129, 131 (1976).) A general plan must try to accommodate a wide range of competing interests-including those of developers, neighboring homeowners, prospective homebuyers, environmentalists, current and prospective business owners, jobseekers, taxpayers, and providers and recipients of all types of city-provided services-and to present a clear and comprehensive set of principles to guide development decisions. Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be "in harmony" with the policies stated in the plan. (*Greenebaum, supra,* 153 Cal.App.3d at p. 406, 200 Cal.Rptr. 237.) It is, emphatically, *not* the role of the courts to micro-manage these development decisions. Our function is simply to decide whether the city officials ***720** considered the applicable policies and the extent to which the proposed project conforms with those policies, whether the city officials made appropriate findings on this issue, and whether those findings are supported by substantial evidence. (Code Civ.Proc., § 1094.5; *Youngblood v. Board of Supervisors, supra,* 22 Cal.3d 644, 651, 150 Cal.Rptr. 242, 586 P.2d 556.)

In this case, there is no question that the city thoroughly evaluated the Oak Knoll project in light of relevant OCP planning policies, and made a finding (and incorporated, by reference, the findings of the planning commission) that the project is consistent with those policies. The only real issue is ****191** whether substantial evidence supports that conclusion. It does. The EIR contains a detailed discussion of evidence of consistency with pertinent OCP policies on Housing, Land Use, Residential Uses, Open Space and Natural Resources, Earth Resources, Water Resources, Plant and Animal Resources, Safety and Seismic Safety, and Scenic Highways. As to the three "Land Use" policies on which appellant relies, there is conflicting evidence. On the one hand, the EIR states that the prominent visibility of the project, removal of the knoll, and development of lots 16, 17, and 18 conflict with portions of those Land Use policies favoring development which is sensitive and harmonious with the natural setting, and avoids significant alteration of natural land forms. On the other hand, the EIR states that the Oak Knoll project is consistent with these same policies in that it would minimize grading, avoid encroachment on natural drainage, provide a conservation easement on three sides of the property, avoid "cut and fill" techniques for creating building pads, protect most of the 30+ percent slopes by including them within the conservation easement and re-planting those slopes where development will occur, and use landscaping to help the project blend into the natural and built environment. We will not re-weigh this evidence. (*Board* *of Trustees v. Munro, supra,* 163 Cal.App.2d at p. 445, 329 P.2d 765.) We conclude that the city council did not abuse its discretion by evaluating the Oak Knoll project under the competing policies of the OCP and deciding, after weighing all the evidence, that the project was generally consistent with applicable OCP policies.

CONCLUSION

For all of the foregoing reasons, we affirm the trial court's decision denying appellant's petition for writ of mandate.

KLINE, P.J., and BENSON, J., concur.
Cal.App. 1 Dist.,1993.
Sequoyah Hills Homowners Assn. v. City of Oakland
23 Cal.App.4th 704, 29 Cal.Rptr.2d 182

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EXHIBIT 14

Wood v. Riverside General Hosp.
Cal.App.4.Dist.
THOMAS WOOD, Plaintiff and Appellant,
v.
RIVERSIDE GENERAL HOSPITAL et al., Defendants and Respondents.
No. G013623.

Court of Appeal, Fourth District, Division 3, California.
May 11, 1994.

SUMMARY

In a medical malpractice action against a county hospital, the trial court granted summary judgment for the hospital predicated on plaintiff's noncompliance with the claims requirement of the Tort Claims Act. (Superior Court of Orange County, No. 590498, Richard J. Beacom, Judge.)

The Court of Appeal affirmed. It held that the trial court properly concluded, as a matter of law, that letters by plaintiff's mother to the hospital, submitted while plaintiff was hospitalized, in which the mother recited numerous items of mistreatment, did not constitute substantial compliance with the claims requirement. The letters were not directed to one of the persons specified in Gov. Code, § 915, and did not contain anything constituting notice of the amount of a claim, as required by Gov. Code, § 910, subd. (f). Thus, the letters provided no opportunity to investigate or settle the claim. Even the most liberal reading of the letters did not permit an inference that plaintiff intended them to be an assertion of a claim for money damages. (Opinion by Rylaarsdam, J., [FN*] with Wallin, Acting P. J., and Sonenshine, concurring.)

FN* Judge of the Orange Superior Court sitting under assignment by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Government Tort Liability § 17--Claims-- Presentation and Consideration--Medical Malpractice--Sufficiency--Substantial Compliance.
In a medical malpractice action against a county hospital, the trial court, in granting summary judgment for the hospital, properly concluded, as a matter of law, that letters by plaintiff's mother to the hospital, submitted while plaintiff was hospitalized, in which the mother recited numerous items of mistreatment, did not constitute substantial compliance with the claims requirement of the Tort Claims Act (Gov. Code, § 911.2). The letters were not directed to one of the persons specified in Gov. Code, § 915, and did not contain anything constituting notice of the amount of a claim, as required by Gov. Code, § 910, subd. (f). Thus, the letters provided no opportunity to investigate or settle the claim. Even the most liberal reading of the letters did not permit an inference that plaintiff intended them to be an assertion of a claim for money damages.
[See 3 **Witkin,** Cal. Procedure (3d ed. 1985) Actions, § 186.]
(2) Government Tort Liability § 18.2--Claims--Construction and Purpose of Statute.
The principal purposes of the claims provisions of the Tort Claims Act (Gov. Code, § 911.2) are to give notice to the public entity in order that it be afforded a timely opportunity to investigate the claim and determine the facts, and to avoid unnecessary lawsuits by giving it the opportunity to settle meritorious claims without going through an avoidable trial.

(3a, 3b) Government Tort Liability § 17--Claims--Presentation and Consideration--Substantial Compliance.
When there has been an attempt to comply with the claims provisions of the Tort Claims Act (Gov. Code, § 911.2), but the compliance is defective, the test of substantial compliance controls. Under this

test, the court must ask whether sufficient information is disclosed on the face of the filed claim to reasonably enable the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit. To gauge the sufficiency of a particular claim two tests are applicable: Is there some compliance with all of the statutory requirements, and if so, is this compliance sufficient to constitute substantial compli- ance?

(4) Government Tort Liability § 24--Actions--Pleading--Failure to File Claim--Affirmative Defense.
The failure to file a claim under the Tort Claims Act (Gov. Code, § 911.2) does not constitute an affirmative defense for the public entity. The timely filing of a claim is an essential element of a cause of action against a public entity and failure to allege compliance renders the complaint subject to general demurrer. A public defendant therefore need not plead lack of compliance with the claims statute, and a failure to so plead does not constitute a waiver.

(5a, 5b) Government Tort Liability § 30--Actions--Summary Judgment-- Noncompliance With Claims Statute--Failure to Plead.
Although it is error to grant summary judgment on the basis of an issue not raised by the pleadings, no purpose would be served by returning to the trial court a case granting summary judgment to a hospital for plaintiff's failure to comply with the Tort Claim Act, even though the complaint failed to allege compliance therewith. A timely filing of a claim is an essential element of a cause of action against a public entity and failure to allege compliance renders the complaint subject to a general demurrer or to a motion for judgment on the pleadings. Had such a motion been made or had the trial court treated the summary judgment motion as a motion for a judgment on the pleadings, it should have been granted with leave to amend, but the subsequent motion for summary judgment would have had the same result since there was in fact no compliance with the statute.

(6) Summary Judgment § 19--Hearing and Determination--Treatment as Motion for Judgment on Pleadings.
When a motion for summary judgment is, in effect, a motion for judgment on the pleadings, it is the better practice to grant the motion with leave to amend and, after the issues have been properly pleaded, to renew the motion for summary judgment. In preparing and ruling on motions for summary judgment, the parties and the courts should take care to distinguish between the sufficiency of the pleadings and the sufficiency of the evidence. On summary judgment motions, the pleadings always define the issues. If the pleadings are not defective, the court may then determine whether the triable issues apparently raised by them are real or merely the product of adept pleading. If the court finds that the pleading is insufficient, it has discretion to grant the opposing party leave to amend. However, a court granting plaintiff leave to amend a cause of action should not at the same time attempt to summarily adjudicate material issues which underlie that same cause of action.

COUNSEL
Pancer & Nachlis, Marvin B. Nachlis and Richard P. Langevin for Plaintiff and Appellant.
Patterson, Ritner, Lockwood, Zanghi & Gartner, John Zanghi, Karen N. Brueckner, Greines, Martin, Stein & Richland, Timothy T. Coates and Carolyn Oill for Defendants and Respondents. ***1116**
RYLAARSDAM, J.*
FN* Thomas Wood commenced this action on May 10, 1989. Respondent Riverside County answered and eventually was granted summary judgment predicated upon the failure of Wood to present a claim for damages before filing the action as required by Government Code section 911.2. FN1 Wood argues that a "Patient Problem/Complaint Form" submitted to the hospital's quality assurance department on June 20, 1988, together with a "Supplemental Note" dated June 29, both complaining about the quality of his care constituted substantial compli-

ance with the claims statute. We disagree.

FN* Judge of the Orange Superior Court sitting under assignment by the Chairperson of the Judicial Council.

FN1 Although the appeal purports to be from an order granting summary judgment and such orders are nonappealable, judgment was in fact entered. Therefore we consider the merits. (*Modica v. Merin* (1991) 234 Cal.App3d 1072 [285 Cal.Rptr. 673].)

Following an automobile accident on May 11, 1988, plaintiff was confined to Riverside General Hospital. His complaint alleges medical malpractice and related causes of action. It is undisputed that Riverside General Hospital was owned and operated by the County of Riverside and is entitled to the benefits of the claims provisions of the Tort Claims Act (Gov. Code, [FN2] § 900 et seq.).

FN2 Unless otherwise indicated, all code sections refer to the Government Code.

While Wood was still hospitalized, his mother submitted a written communication to the hospital on his behalf, reciting in great detail numerous items of mistreatment. The first two pages of this document, dated June 20, 1988, consist of handwriting on a "Patient Problem/Complaint Form." The next four pages are typewritten and indicate neither the author nor the addressee. The final page is dated June 29, is typewritten, and bears the signature of Wood's mother. The parties apparently agree that this material was supplied to the hospital administration during June 1988. On July 19, the hospital's chief of staff acknowledged receipt of the "letter of June 29, 1988," and stated the matter "has been referred the appropriate people and committees to try to rectify problems so that they do not occur in the future."

No other communication constituting a "claim" was submitted by plaintiff to the County of Riverside.

I

(1a) The primary issue may be simply stated. Is there a triable issue of fact whether plaintiff's letters to the hospital constituted substantial compliance with the claims statute or did the court properly conclude, as a matter of law, that the letters did not constitute substantial compliance? ***1117**

The Tort Claims Act provides that, with certain exceptions not relevant hereto, "... no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented ... until a written claim therefor has been presented to the public entity ...." (§ 945.4.)Section 915 specifies that the claim must either be delivered or mailed "to the clerk, secretary, or auditor" of the local public entity. No contention is made that this was done. Section 910.2 requires that the claim "be signed by the claimant or by some person on his behalf." The basic document, presumably transmitted on June 20, 1988, bears no signature; the "supplemental note" of June 29, bears the signature of Miriam Thomas, plaintiff's mother.

Finally, section 910 specifies the required contents of the claim. Some of these requirements are met; significantly, however, the letters completely fail to satisfy the requirements of section 910, subdivision (f) that the claim show the amount claimed or (for claims over $10,000), "whether jurisdiction over the claim would rest in municipal or superior court."

The letters certainly indicate that plaintiff was unhappy with the care received at the hospital. They complain of neglect, unsanitary conditions, failure of the hospital staff to be sensitive to and attend to plaintiff's pain, failure to call in required specialists, and failure to promptly treat some of plaintiff's conditions. However, even the most liberal reading of the letters does not permit an inference that plaintiff intended them to be the assertion of a claim for money damages.

Testing the contents of the letters against the requirements of the Tort Claim Act, we agree with the trial court's conclusion that, as a matter of law, they fail to constitute substantial compliance with the requirements of that act. (2) "The principle [*sic*] purposes of the claims statute are to give notice to the municipality in order that it be afforded a timely opportunity to investigate the claim and determine the facts; and to avoid unnecessary lawsuits by giving the municipality the opportunity to settle meritorious claims without going through an avoidable trial." (*Lacy v. City of Monrovia* (1974) 44 Cal.App.3d 152, 155 [118 Cal.Rptr. 277]; accord, *San Diego Unified Port Dist. v. Superior Court* (1988) 197 Cal.App.3d 843, 847 [243 Cal.Rptr. 163].) (1b) Plaintiff's letters failed to serve either of these purposes. There was a failure to direct the letters to one of the persons specified in section 915; it may be inferred from the acknowledgment by the hospital's chief of staff, that the matter was interpreted as raising concern with respect to internal hospital management and that it was dealt with in that fashion; there is no indication that the letters were forwarded to any county department responsible for the handling of claims against the county ***1118** and the content of the letters is not such as to put a recipient on notice that a claim is in fact intended.

When analyzed in the light of the content requirements of section 910, subdivision (f) which requires notice of the amount of the claim, the letters again fail. Had there been any indication that plaintiff intended his letters to constitute a claim against the hospital, the recipient might well have forwarded them to the appropriate county department responsible for the handling of such claims. However, absent such indication, and in view of the failure to address the letters to one of the persons specified in the statute, the letters were inadequate to serve the statutory purposes.

(3a) "Where there has been an attempt to comply [with the claims statute] but the compliance is defective, the test of substantial compliance controls. Under this test, the court must ask whether sufficient information is disclosed on the face of the filed claim 'to reasonably enable the public entity to make an adequate investigation of the merits of the claim and settle it without the expense of a lawsuit.' " (*Pacific Tel. & Tel. Co. v. County of Riverside* (1980) 106 Cal.App.3d 183, 188 [165 Cal.Rptr. 29].) (1c) Arguably, had plaintiff's letters been sent to the appropriate agency for the handling of claims (and, had they been transmitted to the persons designated by the statute, they presumably would have been) the information supplied would have enabled the agency to make an adequate investigation. However, absent such transmission and absent any indication that the correspondence was intended as a claim for money damages, no opportunity to investigate or settle was provided.

(3b) *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456-457 [115 Cal.Rptr. 797, 525 P.2d 701, 76 A.L.R.3d 1223] notes a twofold test for substantial compliance: "to gauge the sufficiency of a particular claim, *two* tests shall be applied: Is there *some* compliance with *all* of the statutory requirements; and, if so, is this compliance sufficient to constitute *substantial* compliance?" (Italics in original.). (1d) Here there was a total failure to comply with at least two of the statutory requirements: failure to transmit the documents to the statutorily designated agent and failure to indicate that a monetary claim was being asserted. In the face of this, we conclude that, as a matter of law, there was no substantial compliance with the claims statute.

Appellant's reliance on *Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699 [263 Cal.Rptr. 119, 780 P.2d 349] is misplaced. There, a medical malpractice plaintiff mailed a notice pursuant to Code of Civil Procedure section 364, subdivision (a) to the hospital. Section 364, subdivision (a) requires potential medical malpractice plaintiffs to notify health care providers of their intent to sue 90 days prior to filing a complaint. The court held ***1119** that the notice,which was clearly designated "*Intention to Commence Action*," was sufficient to trigger an obligation on the part of the agency to give written notice to the claimant of insufficiency of the claim (§ 910.8) or waive any defense based on such insufficiency (§ 911). The character of the notice sent in *Phillips* differs markedly from plaintiff's letters. No reader of that notice could doubt that Ms. Phillips intended to pursue a medical malpractice claim against the hospital; no such inference must necessarily be drawn from plaintiff's letters. The recipient of the section 364 notice in *Phillips*, realizing that a claim was being asserted would, in the normal course of business, forward that claim to the persons responsible for investigating and settling such claims. The letters sent on plaintiff's behalf are not designed to be so received.

II

Appellant argues that respondent failed to plead the noncompliance with the claim requirement and that as a result (1) respondent waived the claim requirement and (2) the court erred in ruling on an issue not raised by the pleadings. Both arguments must fail.

(4) Appellants err in assuming that failure to file a claim under the Tort Claims Act constitutes an affirmative defense. The timely filing of a claim is an essential element of a cause of action against a public entity and failure to allege compliance with the claims statute renders the complaint subject to general demurrer. (*Briggs v. Lawrence* (1991) 230 Cal.App.3d 605, 613 [281 Cal.Rptr. 578].) Since compliance with the claims statute is an element of plaintiff's cause of action, failure to comply is not an affirmative defense. Therefore, a defendant need not plead lack of compliance with the claims statute. Hence a failure to plead such lack of compliance does not constitute a waiver of the defense.

(5a) Appellant correctly notes, however, that it is error to grant summary judgment on the basis of an issue not raised by the pleadings. (*Dorado v. Knudsen Corp.* (1980) 103 Cal.App.3d 605, 611 [163 Cal.Rptr. 477].) The complaint fails to allege compliance with the claims statute. As noted, the timely filing of a claim is an essential element of a cause of action against a public entity and failure to allege compliance with the claims statute renders the complaint subject to a general demurrer or to a motion for judgment on the pleadings. A motion for summary judgment may effectively operate as a motion for judgment on the pleadings. (*Koehrer v. Superior Court* (1986) 181 Cal.App.3d 1155, 1171 [226 Cal.Rptr. 820].) Had such a motion been made or had the court treated the summary judgment motion as a motion for judgment on the pleadings, it should have been granted with leave to amend. ***1120** Since it is undisputed that the only "claim" submitted by plaintiff consisted of the letters discussed herein, a subsequent motion for summary judgment would have had the same result as that obtained in the court below.

(6) When a motion for summary judgment is in effect a motion for judgment on the pleadings, it is better practice to grant the motion with leave to amend and, after the issues have been properly plead, to renew the motion for summary judgment. As noted in *Hejmadi v. AMFAC, Inc.* (1988) 202 Cal.App.3d 525, 536 [249 Cal.Rptr. 5]: "... in preparing and ruling upon motions for summary adjudication ... the parties and the court should take care to distinguish between the sufficiency of the pleadings and the sufficiency of the evidence. On summary judgment motions, the pleadings always define the issues. [Citations.] ... *If the pleadings are not defective*, the court may then determine from the evidence in support of and in opposition to the motion 'whether the triable issues apparently raised by them are real or merely the product of adept pleading.' [Citations.] [¶] If the court finds that the pleading is insufficient, it has discretion, ... to grant the opposing party leave to amend. [Citations.] However, a court granting plaintiff leave to amend a cause of action should not at the same time attempt to summarily adjudicate material issues which underlie that same cause of action." (Italics in original.)

(5b) Although such a two-step procedure would have been preferable, here, the result would nevertheless have been the same. In the light of this, no purpose would be served in returning the case to the court below only to have the pleadings amended and, thereafter to have a renewed motion for summary judgment granted.

The judgment is affirmed.

Wallin, Acting P. J., and Sonenshine, J., concurred.
***1121**
Cal.App.4.Dist.
Wood v. Riverside General Hospital
25 Cal.App.4th 1113, 31 Cal.Rptr.2d 8

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